

# TORTURE

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*Special section: Torture in the use of less-lethal weapons.*

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## TORTURE

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# Assessment and litigation of ocular injuries by less-lethal weapons.

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## Abstract

*Introduction:* Ocular injuries by less-lethal weapon have had an epidemic prevalence in some countries in the last decade. Unfortunately very few cases are litigated and victims do not get neither justice nor reparation and rehabilitation. *Method:* We review the difficulties and provide suggestions based on the experience of the authors' of the papers in the Special Section of Torture Journal and the experience of the SiR[a] center. *Results:* We review the specific and complex conditions for litigation and strategic litigation, and possible options for human rights organisations, with an emphasis on the challenges of collecting evidence during and after the injury event. We then review the medical and psychiatric assessment based on the Istanbul Protocol, including detailed guidance and practical advice on the ophthalmological, medical, psychological, psychometric and psychosocial aspects. *Conclusions:* In the road to the banning of less-lethal weapons, advocacy work and justice for victims, we need better planning and strategy and further efforts in forensic documentation and litigation. The networks of survivor's organisation are an example of how also anti-torture centers can cooperate in this regard.

## Introduction

The main cause of serious ophthalmological injuries, including violent eye amputations in the context of so-called less lethal weapons, is the use of blunt objects, such as batons or extendable sticks and the use of kinetic energy projectiles (rubber bullets, pellets, foam projectiles or others). Such injuries in the context of population control have been considered to constitute cruel, inhuman or degrading treatment or even torture when they are carried out, intentionally, by State officials (or with their acquiescence or protection) and involve any of the purposes contemplated in the Convention against Torture. Due to their special characteristics, they constitute rights violations that entail unique difficulties and complexity from both a legal and forensic point of view. This paper addresses some of these difficulties with practical legal and forensic recommendations.

It is structured in three parts: First, legal, where we consider legal difficulties and provide suggestions on elements for obtaining evidence are given. Second, medico-psychological and forensic, where we review the elements to be considered in the

interview, the medical and ophthalmological evaluation, and the psychometric, psychological and psychiatric evaluation. Third, with reflections on moral, ethical and political dilemmas, and questions for policy-makers.

## Part 1: Legal considerations for evidencing and litigating ocular injuries by less-lethal weapons

Eye mutilations constitute severe forms of bodily and psychological harm associated with experiences of ill-treatment or torture, both in custodial and non-custodial settings. Despite this, and as reflected in the experiences of different countries in this issue of *Torture*, very few and almost anecdotal cases are prosecuted, given the magnitude of the phenomenon.

There are generally two paths for legal proceeding: criminal complaints against the responsible State agents or institution,<sup>1</sup>

1 In such cases, the institution, or the body to which it belongs, is not liable on the facts. It is the State as a whole that is vicariously liable in the event that the victim is compensated.

and administrative claims for compensation against the State (under different causes of action depending on the country). In both types of case, lawsuits can constitute strategic litigation to promote policy or legislative changes.

Strategic litigation requires [1] an analysis of the context (a sociological understanding that society is ready for change), [2] the political moment (a correlation of forces that is conducive to change) and the [3] feasibility of change. Sometimes, it is more practical to litigate small changes (such as a change in regulations) that constitute new steps towards an ultimate goal (i.e. the prohibition of less lethal weapons). Strategic litigation must often respond to ‘windows of opportunity’ (Kingdon, 1995). But it is always necessary to assess the impact of an unfavourable ruling, which creates jurisprudence in the opposite direction to that pursued by the litigation.

#### *The legal view: difficulties in litigation and possible options*

Let us first address some reasons that help to understand the low number of cases that are dealt with by legal means, and some possible strategies that will be of greater or lesser applicability depending on the Court concerned and the national and international context in which they occur.

#### 1. Inadequacy of the criminal offence.

As repeatedly made clear by the different bodies and institutions responsible for interpreting the Convention against Torture, the scope of police actions on persons not in custody (non-custodial settings) would be subject to the same legislative framework as in custodial contexts.<sup>2</sup>

However, this consideration in the international legal system is not reflected in national ones, where, on the one hand, *cruel, inhuman or degrading treatment* is not usually criminalised as such, and on the other hand, there are a multitude of criminal offences (crimes of injury, unlawful coercion, excessive

use of force or others, with or without an intentional component) that do not fall within the criminal offence of torture. The decision relates to what the legislator considers in each case the “protected legal right” - which can range from the right to physical integrity, freedom, dignity, moral integrity, the correct exercise of public functions, or others-.

This discrepancy suggests several lines for legislative-jurisprudential progress: (a) institutional and political lobbying actions to adjust the legal definitions of ill-treatment or torture to include situations of persons who are not in custody, (b) strategic litigation actions to generate jurisprudence at national or regional level on the consideration of situations of police abuse in non-custodial contexts and especially in the framework of assemblies, (c) complaints to committees of the United Nations Human Rights system to obtain resolutions urging the adaptation of legislation to guarantee victims “effective remedies and reparation”.

#### 2. The burden of proof and international obligations of States in this area.

Another critical reason preventing further litigation of cases is the failure of authorities to cooperate in establishing accountability. Multiple examples are described in the case studies presented in this Special Section of *Torture*: Prosecutorial inactivity or premature closure of cases (Chile<sup>3</sup>); criminalisation of related offences (Spain, Colombia, South Africa); failure to secure testimony from the injured (South Africa, Spain), corporatism (or vested interests) of law enforcement agencies that do not provide information even under judicial request (South Africa, Colombia, Chile, Spain), tendency of judges to dismiss on the grounds that the victim voluntarily exposed themselves to the possibility of being injured in such a way and to assume the absence of malice (Spain, Colombia).

The Convention against Torture (Articles 2 and 12) obliges States to investigate, ex officio, situations in which there is suspicion of the commission of torture or ill-treatment.<sup>4</sup> In the same vein, the major regional human rights courts have made numerous judgments against States for failures to promptly and impartially investigate allegations of torture,<sup>5</sup> including the

2 Commission on Human Rights: “Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment”, 10 January 1997, E/CN.4/1997/7, paras. 122-123; Human Rights Council: “The promotion and protection of human rights in the context of peaceful protests”, 11 April 2014, A/HRC/RES/25/38, par.2; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: “Mission to the Gambia”, 16 March 2015, A/HRC/28/68/Add.4, par. 27; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment”, 20 July 2017, A/72/178, paras- 34-36 and 62;

3 In Chile, the main reason for the closure of cases by the Prosecutor’s Office is the “abandonment of the legal action by the victim”, a euphemistic legal formula used to say that the victim was not able to provide sufficient evidence under the prosecutors opinion.

4 Article 12: “Each State Party shall ensure that, wherever there is reasonable ground to believe that an act of torture has been committed within its jurisdiction, the competent authorities proceed to a prompt and impartial investigation.

5 In the European Court of Human Rights, the ECHR has

European Court of Human Rights<sup>6</sup> and the Inter-American Court of Human Rights.<sup>7</sup> However, most States consider that there is a tension between this mandate and the right of police officers to be presumed innocent. This tension is not real, as the proper investigation of the facts should be seen as a protective element for officer themselves.

### 3. Identification of the perpetrator.

A particularly relevant element to initiate criminal proceedings in some jurisdictions is the obligation of the victim to identify the specific officer who fired the shot(s) that caused the injury. In many countries, officers are not identified by their uniform with their name or professional number, or the number is illegible in size. Even if there is an identification obligation, officers often hide or conceal their ID badges during operations. As the case studies discussed below show, this limitation, together with the corporatism of the police mentioned above, has prevented criminal prosecutions in, for example, South Africa, Spain<sup>8</sup> or Colombia.

The obligation of a prompt and impartial investigation established by the Convention implies, de facto, that the investigating judge must issue an order to the law-enforcement authority to be informed of the perpetrator's identity or to be provided with information conducive to that determination. Furthermore, the United Nations statute of the victim<sup>9</sup> and

General Comment No. 3 of the Committee against Torture<sup>10</sup> clearly state that a person can be a victim of torture regardless of whether the perpetrator is identified.

In the specific case of eye injuries, human rights organisations (Amnesty International & Omega Research, 2023; Velasquez et al., 2022) have proposed a number of measures that can facilitate compliance with the duty to investigate and on which civil society could advocate. The most important of these is the existence of national protocols that will allow for the investigation of situations in which serious incidents of use of force by State security forces occur. This would imply, at the very least, the existence of **detailed reporting forms** to be completed by each of the officers involved in an incident, including at the very least:

- Estimated distance between agent and target at the time of firing, including graphic representations of the scene (sketches).
- Precise identification by the officer of the ammunition used.
- Number of shots fired and the reason for them.
- The area targeted and justification if another area was hit.
- Injuries caused and assistance given to the citizen.

Such forms should be completed ex officio within 24 hours and be accessible to the parties in legal proceedings. This report would guarantee both the officer and the citizen, allowing for an internal investigation, external documentation and triangulation of information between different statements and sources, even months after the event, avoiding distortions of memory, or otherwise.

### 4. The distinction between lawful use of force and ill-treatment or torture.

There is precise guidance from UN bodies<sup>11</sup> indicating when intervention in the context of demonstrations could constitute ill-treatment or torture. To be in accordance with the law, any intervention by law enforcement agents must respect the principles of legality, necessity, proportionality, precaution, and non-discrimination, and “with due regard to the freedoms of assembly and expression”.<sup>12</sup>

cited *Assenov and Others v. Bulgaria*, App. No. 24760/94, 28/10/1998, § 102; *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, 13/12/2012 § 182; *Arratibel Garcíandia v. Spain*, App. No. 58488/13, 5/5/ 2015, § 35. In the Inter-American Court of Human Rights, it is worth mentioning the *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 7 September 2004. Series C No. 114, § 159 or *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 27 November 2013. Series C No. 275, § 375 o *Case of Maldonado Vargas et al. v. Chile*. Merits, Reparations and Costs. Judgment of 2 September 2015. Series C No. 300, §§ 75-76.

6 The most recent are *SSTEDH MG v. Lithuania*, App. No. 6406/21, 20/02/2024, § 129 or *Al-Hawsawi v. Lithuania*, App. No. 6383/17, 16/01/2024, § 196

7 I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of 25 November 2006. Series C No. 160, § 344; *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 January 2009. Series C No. 194, § 331.

8 *STEDH López Martínez v Spain*, App. N° 32897/16, 9/03/2021, §§ 37-38 : <https://hudoc.echr.coe.int/?i=001-208362>

9 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, art. 2.

10 Committee against Torture, General Comment No. 3, Implementation of article 14 by States parties, art. 3.

11 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: *A/72/178, cited*. Par. 46. Office Of the United Nations High Commissioner For Human Rights (2017): Resource book on the use of force and firearms in law enforcement , par. 1.3, p. 12; UN High Commissioner for Human Rights (2021). UN Human Rights Guidance on the Use of Less Lethal Weapons in Law Enforcement, par. 2.

12 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: *A/72/178, cited*. Par. 15.

In practice, lawful use of less lethal weapons requires the State to prove that:

- There was an imminent threat of injury to citizens or law enforcement personnel.<sup>13</sup>
- The officers tried to resolve the situation by less harmful means and opted for the use of less lethal weapons when all options had been exhausted.<sup>14</sup>
- The intervention followed the regulations on using weapons, which should be public and accessible to all parties.<sup>15</sup>
- The existence of a clear chain of command and hierarchical orders that indicated to the officers what they should do at any given moment without giving rise to ambivalence or confusion.<sup>16</sup>
- Use of force was not specifically directed against any group based on discrimination.<sup>17</sup>

To this end, in addition to the detailed reporting outlined above, it would be helpful to establish systems for recording all situations in which less lethal weapons are used, allowing for global statistics on use, detecting anomalous situations, documenting consequences in terms of injuries or deaths, and modifying protocols accordingly (Amnesty International & Omega Research, 2023; Velasquez et al., 2022). This register would be independent of the existence of civil society monitoring systems or independent oversight bodies created by the State itself, with the capacity to review incidents (Amnesty International & Omega Research, 2023; Velasquez et al., 2022).

Such reports would open up another possible avenue of investigation, argumentation and substantiation for litigation cases: analysing, before the Court, the legitimacy, necessity, proportionality, precaution, respect for the right to assembly and non-discriminatory nature of the intervention that caused the eye injury.

13 UN High Commissioner for Human Rights (2021). UN human rights guidance on the use of less lethal weapons in policing.

14 Human Rights Committee (2018): General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, par. 14

15 The regulations establish the type of weapon and certifications required, the types of projectiles (diameter, density, material). It also establishes the operating procedures depending on the projectile, including, among other aspects, the minimum and maximum shooting distance, the areas of the body at which they can be aimed (lower limbs and lower abdomen, and only for justified reasons other areas), shooting position (never from elevated positions or from the air).

16 Office Of the United Nations High Commissioner for Human Rights (2017): Resource book..., *cited*, pages 16 and 78

17 UN High Commissioner for Human Rights (2021). UN Guidance... *cited*, par. 2.11. UN General Assembly (1979): Code of Conduct for Law Enforcement Officials, art. 2.

## 5. Value of forensic evidence.

Another critical barrier to litigation is the feasibility of forensic evidence and the value attached to it. Concerning feasibility, it has been pointed out in different contexts (see Chile and Colombia in this same Special Section) how forensic institutes collapsed in the face of the avalanche of cases of eye injuries over recent years, causing the victims to be summoned for a first evaluation up to more than a year after the events, and that in most cases the Court was informed of the impossibility of carrying out an expert assessment based on the Istanbul Protocol. Additional resources should be provided when such situations occur, to comply with international obligations. Time is an essential element, linked not only to proper determination of facts, but also to advancing rehabilitation and reparation measures in due time.

The matter also turns on how different legal systems consider party expert evidence as contrasted with official expert evidence. Even though the Istanbul Protocol itself, some national legislations (e.g. Mexico) and a number of treaty bodies and UN experts<sup>18</sup> have indicated that the same evidential value should be given to party expert opinions as to official expert opinions, in some jurisdictions, only official reports are accepted by the Court. Rather, evidence should be considered based on the curriculum vitae and the experts' specific subject matter expertise. This consideration should be granted in the case of civil society organisations that are part of international networks of care for victims of torture and are properly accredited as experts in the field.

There is enormous variation between States' legal frameworks for forensic evidence, such as:

- a. States where only official forensic institutions (Institutes of Forensic Medicine, Forensic Medical Services or others) are allowed to issue opinions<sup>19</sup>.
- b. States in which adversarial action is allowed through independent expert evidence commissioned by organisations specialised in the field, or directly by the victim.<sup>20</sup>
- c. Contexts where the evaluation is required to be in line with the Istanbul Protocol, others where local adaptations of the

18 Human Rights Council : Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 18 January 2012, A/HRC/19/61,

19 In turn, these institutions are sometimes independent bodies of the state, while in others they are attached to the same ministry or institution that may be responsible for the abuses, breaking the principle of forensic independence.

20 These in turn can have different levels of legitimacy. In some systems they are given the function of auxiliary to official expertise, in others they are given a lesser subsidiary value, and in others they are given equal evidentiary weight depending on the expertise and credentials of the experts.

Protocol exist, and still others where other reporting models exist that do not meet the ethical and research standards of the Protocol.

This opens the way for civil society and human rights organisations to work towards making forensic medicine institutions independent in both institutional and budgetary terms and to ensure that the value of forensic expertise carried out by independent human rights institutions and experienced party forensic experts is enshrined in law.

## 6. The investigator of facts.

Similarly, there are variations concerning the entity in charge of investigating the facts, between States in which the burden of investigation falls on the inspection systems of the police institution itself - in violation of the principle of independence -, on external police monitoring institutions - with legitimacy to receive complaints, but not to investigate them, or only until a criminal proceeding is initiated - or on criminal investigators (sometimes even military courts).

Again, there is fruitful advocacy to be done on pushing for monitoring independent from the law-enforcement agency, increasing transparency and impartiality, on the understanding that this is not incompatible with internal inspection systems. Both have different and important purposes.

## 7. Difficulties from the judicial process itself.

Finally, the experience in different States reveal problems inherent to the dysfunction of the judicial system itself, among which the following stand out:

- Very long procedural times (sometimes decades), when victims of eye injuries require immediate assistance in terms of recognition, rehabilitation and reparation.
- The need for resources to finance the legal proceedings, which only in the end, if the case is won, can be reimbursed. This is especially relevant in contexts where employment, education or work is often lost as a consequence of the disability caused by the injury.

In this sense, the forms of self-organisation of the victims, the associative spaces that allow fundraising, agreements with institutions and teams of professionals, and the actions of donors and organisations that support strategic litigation cases (see below) are essential.

## 8. Administrative claims: demands for reparation, including financial compensation.

If the legal process is linked to an administrative demand for reparation, there are additional difficulties in assessing and quantifying the damage caused. Very few States have adopted nation-

al Damage Assessment scales that provide guidelines on how to quantify compensations for disability due to State actions. In Europe, for example, the “*European Scale Guide for the Assessment of Physical and Mental Injuries*”<sup>21</sup> has not been adopted, despite numerous drafts and discussions<sup>22</sup>.

## Collecting evidence

To successfully prosecute cases, it is essential to consider the collection of evidence. This is the subject of the following section. Two situations are relevant: evidence collected on the spot and the collection of ex post facto evidence.

### 1. Collection of real-time evidence.

In those expressions of civil society where repressive actions may eventually occur, planning for their monitoring is essential. The details of how to organise monitoring actions are beyond the scope of this paper, but it is relevant to consider the following points:<sup>23</sup>

- **Training:** Have people trained in real-time documentation of human rights violations who can take photographs or video recordings of the actions, with particular emphasis on the identification of the agents responsible (surnames, initials or badge numbers, faces, full body photographs that identify peculiarities in the way they dress or behave). The recordings will make it possible to document the sequence of events. This is especially relevant for the forensic determination of (a) the interaction between the population and the security forces, to assess the necessity and proportionality of the intervention, (b) compliance with protocols and rules for the

21 <https://www.europarl.europa.eu/meetdocs/committees/juri/20040223/505310EN.pdf>

22 In many countries, the Guidelines used are designed for work or traffic accidents. They do not consider, therefore, injuries and sequelae generated by intentional actions (malicious), which are very different in nature from accidental ones (reckless). Furthermore, they usually do not contemplate the concept of “non-material damage”, damage not linked to a physical injury, they do not take into account the medical, psychological-psychiatric, social, etc., background of the victim and the assessment of the psychological-psychiatric impacts are not in line with the impacts included in the DSM-V or ICD-11, giving scarce weight to psychiatric sequelae. The need to advocate for proper compensation scales is an important point to be considered by human right organization working with survivors of eye mutilation and other physical injuries.

23 Detailed guides can be found at <https://prt.civicus.org/>; <https://irct.org/protesttoolkit/>; <https://www.greenpeace.org/usa/toolkits/protest-safety-tips-from-greenpeace/>



use of less-lethal weapons, (c) impacts, and as support in the medical examination and determination of injuries, (d) detection of possible situations of intentional punitive use of force, (e) identification of the type and model of weapon used, and (f) identification of evidentiary elements that can be claimed later in Court (e.g. existence of body cameras).

- The training of the observers will allow (a) to obtain stable images, avoiding sudden movements or changes of the plane, (b) to remain silent or with minimal commentary during the recording, allowing the ambient sound to be recorded, (c) to immediately upload videos and photographs as captured to a secure server, (d) not to manipulate or edit images, maintaining a correct chain of custody of evidentiary elements, (e) to disseminate on social networks as soon as possible.
- **Ballistic evidence:** Photograph the projectiles used for subsequent correct identification. Sometimes it might be useful to collect those that may be relevant, using gloves and wrapping them in paper or bags to avoid contamination and at a time when the time and place of collection can be identified, although there is a risk that they can latter be considered as contaminated probes and rejected during the legal process.
- **In case of injuries:** save all clothing with any tears, injury marks or traces of blood. Preserve in bags to avoid contamination and maintain the chain of custody until it can be handed over to forensic authorities.
- Take photos of all injuries, with at least one or two full-length photos. Add notes, if possible, of the person's symptoms. It is preferable to take many pictures from different angles, in natural light and with an object (ideally, a ruler) that allows the size of the lesions to be appreciated.
- Ask for detailed reports from the health centres or hospitals where the victim has been treated. Request that the report conforms to a forensically valid template. The doctor or para-

medic should ideally include what is shown in Table 1. The lawyer can help the victim to request a legally valid injury report from the health centre.

- **Witnesses:** Witnesses who have seen the events should be able to explain or write a detailed account of the events, including places, times, surroundings, position of people, and how the officers acted. Draw sketches if possible. Do not be influenced by other people's accounts; describe only what you have seen and experienced.
  - Identify witnesses to the events and ask for their names and telephone numbers, to give their account or testify about what they have seen.
2. **Collection of evidence after the events.**
- **Videos and photographs:** Analyse the possible location of security cameras in streets, shops, bank offices, and other places along the demonstration route and at the scene. They can be obtained from the owners of the establishments, but in this case, it would be desirable to have a notarised record of their removal, certifying that they have not been tampered with. Alternatively, request them as urgent proceedings from the Court, so that they are not erased. Make appeals through social networks to locate recordings made by individuals who were, at the time, either participating or watching from the pavement or balconies.
  - **Witnesses:** Try to locate witnesses to the incident through posters in the area (bus stops, shops, staircases of neighbours) or social networks.
  - **Photographic expert reports:** Various human rights organisations, such as Forensic Architecture<sup>24</sup> and others, have been developing expert photographic strategies to reconstruct events and eventually identify elements such as the van in which the riot police unit was travelling (model, plate, etc.), the officer who fired the shot based on clothing, physical features etc., the type of weapon used, and others, by integrating diverse visual sources.
  - **Request proceedings** from the court or the prosecutor's office (depending on the investigation system in the country). Attorneys can request a wide range of evidence. Much will depend on the context and the State, but if available, evidence to be considered includes:

**Table 1.** Elements of an injury report following the Istanbul Protocol. Short guideline for lawyers.

- 
- The account of the facts (in the aspects most relevant to the medical examination) in the person's own words, specifying, if possible, the place of the examination.
  - The medical examination should be complete and not only describing the external lesions.
  - Basic description of psychological symptoms.
  - Diagnosis.
  - Whether there is consistency between the account of events and the injuries and diagnoses observed. Strongly advisable for legal purposes but not compulsory if the health worker does not feel qualified to do it.
- 

<sup>24</sup> See, for example <https://forensic-architecture.org/investigation/tear-gas-in-plaza-de-la-dignidad>; <https://forensic-architecture.org/investigation/police-brutality-at-the-black-lives-matter-protests>.

- Identification of police units involved on the day of the event and their distribution in the physical space of intervention.
- Identification of officers carrying less-lethal weaponry, distribution and warrants (intercom recordings or other).
- Inventory of ammunition expended on the day for each unit.
- Traceability data for the ammunition.
- Body camera recordings, if available. Identification of officers who did not wear a camera or did not record.
- Dynamic reconstruction of events.
- Witness location and testimony at a court of law.
- Finally, call for an investigation by independent bodies, particularly the country's National Preventive Mechanism.

Within this body of evidence collected in real time and after the fact, a forensic evaluation of the victim of an eye injury conducted according to the Istanbul Protocol is especially important. This is the subject of the second part of this text.

## **Part 2: Medico-legal considerations for forensic evaluation of ocular injuries.**

### *Psycho-legal approach*

The Istanbul Protocol details a number of ethical principles and interview considerations, especially in chapter four, which need not be reproduced here, but are fully applicable. However, we would like to emphasise some aspects not included in the Protocol, which are very relevant in this context and have to do with a psycho-legal approach.

#### **1. Accompanying the survivor.**

We speak of a psycho-legal approach as a work of accompaniment for the person who has suffered a violation of rights throughout the legal process. The accompaniment begins from the moment when the possibility of a complaint is raised, and requires accurate and unbiased information about the risks and benefits, to the collection of evidence that can support the case; to the process of elaborating, with the lawyer or organisation, the legal strategy; to the preparation of expert statements and documentation of impacts, through to the accompaniment at different procedural moments; and the psychological support offered during the trial and the subsequent work of evaluation. It is essential to bear in mind that any complaint of torture or ill-treatment can take years to investigate and prosecute.

#### **2. The right time to assess.**

Within this framework, it is crucial to assess the ideal time for conducting the forensic assessment, bearing in mind that, in any case, there should be a systematic collection of all medical or psychological evidence of the injury to the victim as and when it arises. Criteria for deciding the best time for the assessment include:

- I. The person has reached a point of recovery that allows the assessment to be carried out, without a risk of serious re-traumatisation.
- II. Enough time has passed to have an overview of the impacts and after-effects of the injury. An assessment made prematurely will not reveal the functional implications, the damage to the identity and life project of the victim, the permanent aesthetic consequences or other essential elements of the assessment.
- III. Proximity to key dates in the judicial process. If the assessment has been carried out too far in advance, it will be necessary to carry out periodic updates to see the evolution of

### *Table 2. Elements of psycho-legal accompaniment*

- Bridge the legal, medical, and colloquial languages and help the victim understand the process, be in control of the process, and be the essential decision-maker.
- Discuss the steps of the legal process with the victim. If strategic litigation is chosen, ensure the victim understands what is at stake.
- Prepare the victim to face the press or interviews with people from the administration or possibly politicians.
- Ensure a realistic perspective and work so that the restorative power of legal action lies in the very fact of carrying it out and in the effort that this means in terms of visibility and denunciation, not in the eventual positive or adverse sentence or in the amount of compensation that may be obtained.
- Accompany the victim in making a statement and dealing with subsequent news reports. Prevent possible harm when faced with contradictory or inaccurate versions from police officers or witnesses provided by the police, statements from political officials denying the facts, or accusations of lack of credibility, or pursuit of economic interest and spurious motives. Be prepared for press or social media reports in which the victim is attacked or insulted, or forensic evaluations that do not include relevant elements of their suffering and experience. All these adverse events can have a traumatic psychological impact, and psycho-legal accompaniment seeks to transform them into elements of empowerment and self-confidence.

the symptoms, the sequelae and the current condition of the victim.

IV. Access to all relevant evidentiary information that may assist the expert in their work: photographs, video recordings, emergency reports, witness statements and others.

Whether the organisation or the experts who carry out the Istanbul Protocol assessment should assume the tasks of psycho-legal accompaniment as part of a comprehensive approach to care for the victim is debatable. While this continuity of action is in the victim's best interest, in some judicial instances, it may be considered that this would call into question the expert's independence. Table 2 summarises some critical aspects of psycho-legal support in eye injury cases.

### 3. Social movements for victims

Part of the accompaniment is also to support and strengthen the organisational processes generated by the victims themselves. This issue's Special Section presents some examples and testimonies from organisations such as 'Movimiento en Resistencia Contra las Agresiones Oculares del Escuadrón Móvil Antidisturbios' (MOCAO) and Temblores (Colombia) and STOP Bales de Goma and Ull per Ull (Spain).

From the point of view of the legal process, there are some relevant considerations for lawyers litigating cases and accompanying entities:

- The existence of an active social movement that supports the claim and has contacts with the press and the media can be decisive elements of support for the victim. They can also play an essential role in pushing for a judicial resolution.
- Such actions need to be coordinated and, as far as possible, aligned with the advocates' strategy. For example, an overly aggressive social mobilisation strategy at inappropriate times can have very adverse effects by generating the idea that those who were injured may represent radicalised, extremist elements, and thus support the idea that it is the victim's responsibility they were injured, and not that of law enforcement. Social pressure is not always positive in legal terms.
- The strategy should emphasise principles relevant to a human rights environment, emphasising values of justice, solidarity and non-violence over claims of outrage or revenge, which, while legitimate, may generate adverse feelings in decision-makers and those who can promote legislative or political change. Confrontation is not usually the best lever for change.
- Messages should emphasise the principles of *empathy* with victims, *urgency* to prevent further cases and *timeliness in the sense of* introducing the idea that now is the time to do it.
- At the same time, the forensic team must maintain absolute independence from these social movements. They should

not make public statements outside the courtroom or participate in events with victims, in order to maintain the ethical requirement of independence.

### 4. Istanbul Protocol

In cases of ocular injury, it is advisable to try, as far as possible, to make the Istanbul Protocol multidisciplinary, given the complexity of everything that needs to be assessed, including, as appropriate, and as far as possible:

- Medical report, assessing the general situation of the victim before and after the event and a detailed examination by medical staff.
- An ophthalmological report, detailing the acute impacts, the possible causal mechanism and the analysis of consistency between this and the injuries. In this regard, the ophthalmologist can make ballistic considerations regarding the nature of the object, velocity, force and direction of impact to justify the causal relationship.
- Traumatological and surgical parts, detailing the different reconstruction processes in the ophthalmological and aesthetic areas.
- The psychological-psychiatric part includes acute impacts, a description of the adaptation process, and chronic psychological and psychiatric impacts.
- A psychosocial part, with an analysis of the impacts on each area of daily life.
- The rehabilitation part will include an analysis of the subsequent adaptation and reconstruction processes of the victim's life project.

As is evident, and as the Istanbul protocol indicates, it is not necessary to have all of these professionals available to carry out the assessment. Any professional can try to cover some or all of these aspects if there is no real possibility of other professionals doing so. To this end, the following should be considered:

#### 4.1. Information gathered in the interview.

In the initial interview, it is essential to collect two parts:

- Collect the complete psychosocial history, including all identity aspects of the person's life (childhood, family, studies, work, friendships, community life, etc.), to compare it with the later situation.
- A detailed account of the facts, including aspects that assist in obtaining evidence and determining causal elements (see the legal part above). In this regard, it is important to remember that victims often have confused or fragmented memories in cases of ocular injuries. In this case, the expert needs to explain the causes (Table 3).

**Table 3.** Causes of inconsistencies in ocular injuries**Inconsistencies in the narrative**

Overall, there is inevitably tumult and confusion in the context of the events.

Speed of the events and difficulty in identifying the point of exit of the projectile, especially when the projectile is not frontal and within the field of action of the victim.

Disorientation in time and space as a consequence of acute impact.

Neuropsychiatric damage, secondary to traumatic brain injury.

Inability to see, as a result of injury or measures to stop bleeding.

Confusion, in the following days, of one's account with the account of other victims.

Giving specific details referred to by relatives or friends, but in reality, the person could not grasp, subsequently entering into contradictions.

Fear of being denounced based on the facts (e.g. participation in riots, aggression against officials, destruction of public property or even participation in "terrorist" acts).

Fear of involving other people.

Inconsistency of symptoms

The problems generated by eye loss are often complex to explain, because they involve subtle elements of daily life that require much systematisation.

To this are added general elements linked to:

Highly directive or symptom-oriented medical or ophthalmological interviews, that provoke re-experiencing and cognitive avoidance. This psychological distress can lead to a superficial and confusing narrative.

The presence of police inside the doctor's or ophthalmologist's office in the first emergency care.

Initial assessment by police-linked emergency services that lack independent reporting. Negative transfer or counter-transfer reactions.

**4.2. Elements of interview support.**

The Istanbul Protocol gives numerous tips and guidelines to maximise confidence and minimise the risk of re-traumatisation during interviews. They are of particular relevance in the assessment eye injuries by less lethal weapons:

- Remind the person that a detailed account of events is essential for proper medical and psychological examination. Moreover, a detailed account facilitates the expression of traumatic experiences in line with the principles of witness therapy and other evidence-based approaches, that combine forensic assessment with psychological support in extreme trauma.
- Try to place the events in the overall picture of what happened. If the person can draw what was happening, what they did and the subsequent events, let them try to do so. If they cannot do so, help them by drawing a sketch or sketch on a blackboard under their instructions. Once the expert considers it a faithful reflection of the facts, take a photograph that can be included as an annex to the expert's report.
- In cases where there are confusing accounts or particular difficulties in remembering, a reconstruction of the events should be considered for memory stimulation and therapeutic process. This reconstruction must be carried out with the

utmost care to prevent harm (do-no-harm principles) and assess the person's psychological state.

An example can be seen in the attached photographs (see Figure 1). In this case, the victim suffered eye injury, as a result of being hit with an extendable police baton when the police were opening the door of his home. The police claimed that he had caused the injury himself with a piece of iron while trying to block the door to prevent them from entering.

It was decisive: (a) to show that the injuries were consistent with the impact of a police baton and not with an iron prop, (b) to show in the reconstruction of events that there was no material physical space for the victim to have self-injured, as the police claimed. The reconstruction also helped the victim to remember the events and allowed for therapeutic work with traumatic emotions and memories.

**4.3. Medical and ophthalmological evaluation****4.3.1. General medical assessment.**

Before assessing eye trauma, a general medical examination must be carried out. The aim is to perform an overall and systematic assessment of damage by organs and apparatus to detect other injuries or sequelae that may have gone unnoticed, even by the

**Figure 1.** Role playing by a the survivor of the circumstances of the aggression by police officers as part of the forensic assessment.



The Role-Playing had the double purpose of (a) sustaining the report by mapping circumstantial elements and (b) doing a prolonged therapeutic intervention by clarification and working with emotions of sadness and guilt.

**Table 4.** General medical examination

- Description of the patient's general condition. Subjective perception of their well-being (how do they feel?). Describe whether the patient is conscious and oriented, has good colouring, nutritional status, body posture and eye contact.
- Systematically examine the patient from head to toe. In the process, a distinction must be made between the *symptoms* (subjective complaints, such as pain, dizziness, difficulty concentrating, eye injuries, problems in grasping objects, calculating distances, etc.) and the objective signs or findings of the physical examination.
- Make a systematic organ-by-organ anamnesis (cardiac, respiratory, digestive and so forth). Try to put in connection the findings with the different moments in the account of events.
- The signs will be the result of a thorough general examination, including head, neck, thorax with cardiopulmonary auscultation and palpation, abdomen with palpation, percussion and auscultation, upper and lower extremities, skin, neurological examination of the central and peripheral nervous system, and genitourinary system.
- In both the anamnesis and the examination, it is important to look for details that help establish a possible causal link between the injuries and the objects of injury used.

victim themselves, which will help establish causal links and consistency with the account of events (Table 4).

#### 4.3.2. Assessment of ocular/ophthalmological damage.

**Basic anatomy of the eye.** To perform its function, the human eye has several anatomical structures that complement each other:

- The eyeball with its anterior and posterior compartments.
- The muscle-tendon structure is responsible for the synchronous movements of both eyes.
- The vascular-nerve bundle.
- The orbital structure with the surrounding bony walls, eyelids and lacrimal ducts.
- Orbital contents of liquid consistency (aqueous humour and vitreous humour).

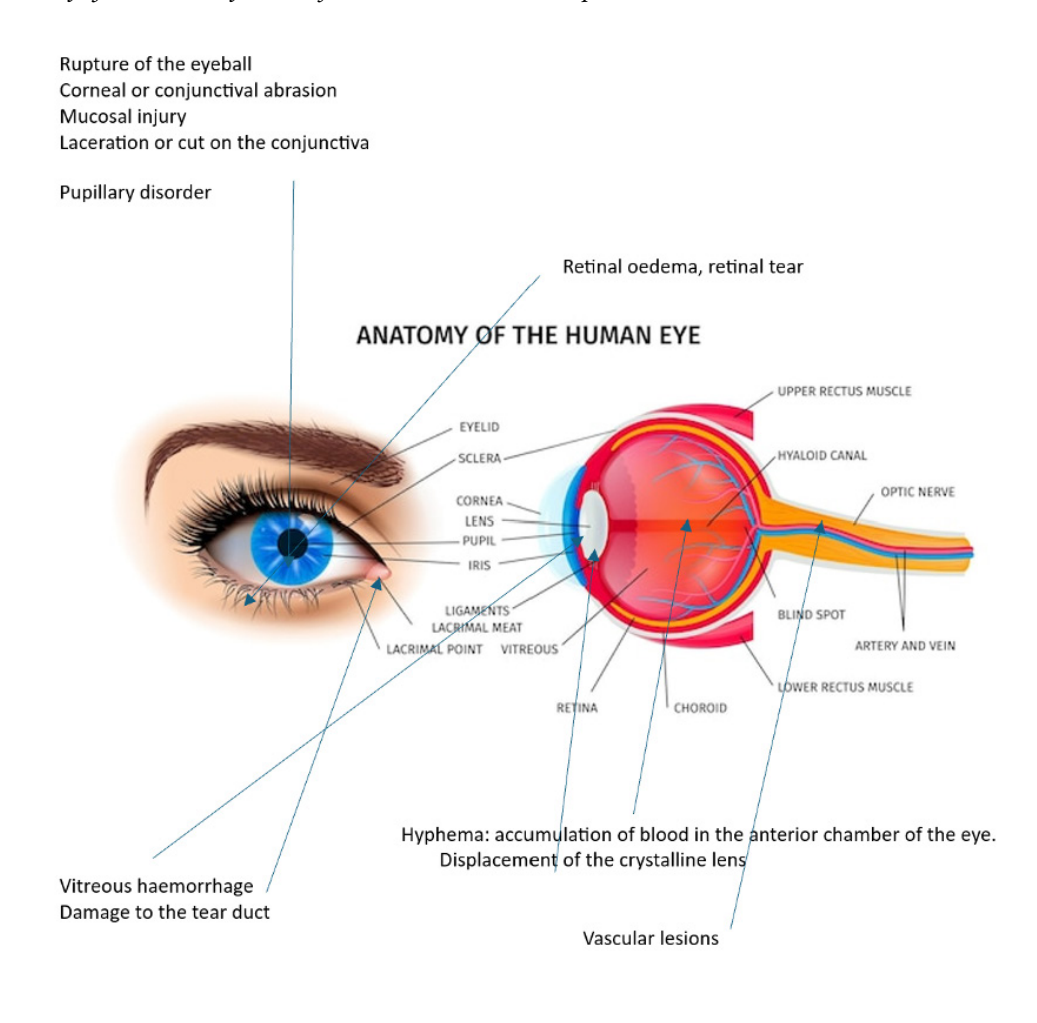
**Eye injuries.** Each of these structures is susceptible to injury upon insult. This injury can be acute and sometimes self-limiting, sometimes with permanent sequelae, including complete and irreversible vision loss in the eye. It is therefore necessary to be familiar with the most common injuries, their consequences and the mechanism of injury.

**Types of eye injuries.** There are open globe and closed globe injuries.

**Open globe:** With outflow of aqueous or vitreous humour.

- Open rupture of the eyeball/burst: by direct trauma with a blunt object of sufficient size.
- Laceration (cut or wound) of the globe, with loss of substance due to direct trauma with a small sharp object, foreign body, projectile, etc.

**Figure 2.** Anatomy of the human eye and injuries due to less-lethal weapons



**Closed globe:** Contusion, with or without partial laceration, without loss of aqueous humour.

- Conjunctival or corneal abrasion.
- Injury to the epithelium or mucous membranes.
- Hyphema: accumulation of blood in the anterior chamber of the eye.
- Traumatic pupillary disturbance, due to damage to the iris sphincter.
- Dislocation of the crystalline lens: displacement of the native or artificial lens implant from its original location.
- Vitreous haemorrhage: bleeding into the vitreous cavity.
- Commotio retinae: oedema in the retina secondary to trauma.
- Retinal detachment: detachment of the retina from the underlying choroid and sclera.

**Types of periocular injuries.** In addition to damage to the eye itself, there may be damage to the structures surrounding the eye, which can impact both aesthetically and its function.

- Eyelid injuries: lacerations, haematomas etc.
- Ruptured or damaged tear duct.
- Orbital fractures: any of the bones that make up the orbit. This may also involve possible complications and sequelae that may range from injuries to the central nervous system (brain trauma or other), to facial nerves and sensory disorders or paralysis.

**Indirect injuries.** All these structures are interrelated, so high-energy trauma, in addition to direct impact injuries, can cause other injuries that we will call indirect and that derive from the secondary involvement of different structures. These are clear examples:

- Retinal detachment, caused by a kickback effect that generates back pressure on the retina.
- Vascular lesions, leading to a retinal ischaemic effect.
- Lesions of some trigeminal nerve branches that may cause long-term hypoaesthesia or anaesthesia of the ipsilateral hemiface or neuralgia-like pains.

Some of these lesions also have the additional difficulty that they may remain undetectable in the first examinations and may present with symptoms at a later stage, even months later.

#### 4.3.3. The most frequent mechanisms of injury.

In the case of impact weapons, a distinction must be made between hand-held weapons, such as batons or expandable batons, and kinetic impact projectiles. In both cases, the most important thing is the kinetic energy of the blunt object, which is proportional to the square of the velocity.

This means that if the speed is doubled, the kinetic energy is multiplied by 4; if the speed is tripled, the kinetic energy is multiplied by 9. In addition to the speed, the object's size, shape, or distance from which it is fired must be investigated. This will enable the expert to establish a causal link between the account of events and the objectified injuries.

As for irritants, with tear gas (chlorobenzalmalononitrile or CS) and so-called pepper gas (N-vanillylnonamide or pseudocapsaicin) (PAVA), it will be essential to find out whether the victims were in an enclosed or open place; whether it was delivered through sprayers or through grenades or projectiles which can also cause impact injuries; and the percentage of chemical or its concentration. These agents, at incorrect concentrations or in enclosed areas, can cause permanent eye burns through corneal damage, leading to opacities as sequelae (Table 5).

#### 4.3.4. Long-term consequences of injury.

Injuries caused by eye trauma result in significant sequelae and disability, with a substantial clinical impact that affects the economic, occupational, social and family situation. According to the World Health Organisation, eye injuries are responsible for 19 million cases of unilateral amaurosis (temporary loss of vision in one or both eyes), 2.3 million cases of bilateral poor vision and 1.6 cases of bilateral blindness worldwide.

Long-term consequences of eye injuries that should be explored:

- Restricted visual field, with loss of three-dimensional vision, associated with difficulties in manual tasks, reading and writing, driving, inability to carry out particular work and social activities, and increased risk of falls due to impaired distance calculation.
- Hypersensitivity to dazzling light, poor handling of shadows, and possible impairment of colour vision.
- Impairment of night vision.

In addition, the psychological and psychosocial impacts of eye injuries are discussed in the next section.

#### 4.3.5. Causal link between aggression and injury.

To determine whether a sequela is secondary to a specific trauma or aggression, we must be able to establish a causal relationship (cause-effect), and this is not always easy. Sometimes, the sequela is the product of several causes that may be related to the patient's previous characteristics. Aggression on an eye already suffering from myopia magna, or a cataract, is not the same as on a healthy eye. On the other hand, forensic medicine includes a series of so-called classical principles that must be carefully analysed, among which are the appropriate nature

**Table 5.** Causal analysis: mechanisms, injuries and clinical consequences

Less lethal weapons	Injuries	Clinic
Blunt impact weapons: truncheons, batons or extendable batons, or any blunt object.	Direct contusion with skin bruising, wounds or skin lacerations Laceration of the eyeball Eye burst Muscle lesions Lacrimal involvement Bone fractures	Pain Dizziness Loss of visual acuity. Diplopia or double vision Blindness or complete loss of vision in the affected eye Loss of binocular vision (loss of vision in three dimensions)
Kinetic impact weapons, projectiles, rubber balls, rubber bullets, etc.	Direct contusion with skin bruising, wounds or skin lacerations Laceration of the eyeball Eye burst Muscle lesions Lacrimal involvement Bone fractures	Pain Dizziness Loss of visual acuity. Diplopia or double vision Blindness or complete loss of vision in the affected eye Loss of binocular vision (loss of vision in three dimensions)
Irritant agents such as pepper spray or tear gas	Local inflammation and irritation of the corneal mucosa Chemical burn Corneal opacities Keratitis or keratosis	Erythema (redness) Severe self-limiting or persistent pain Significant tearing Occasional loss of visual acuity Scotomas (demarcated areas of vision loss) Dry eye
Agents with a blast mechanism, such as stun grenades	Impacts with high velocity, small foreign bodies causing blunt injury (bruises, lacerations, etc.). Corneal burns Skin burns	Pain Partial or complete loss of visual acuity Dry eye Tearing

**Table 7.** Criteria for establishing the causal link of the medical and ophthalmological expert assessment of eye injuries

<b>Nature of the trauma</b>	Aggressor object (shape, size, etc.), energy and kinetics, secondary aggressors (gases, burns).
<b>Post-traumatic aetiology</b>	The injury is secondary to external aggression and not to any other cause.
<b>Topographical correlation</b>	Anatomical matches, taking into account the effects of kickback.
<b>Symptomatic continuity</b>	Evolution of symptoms from the moment of the aggression, and its evolution in the following days and months.
<b>Chronological criterion</b>	The time between the onset of the injury and the assault must be clinically plausible.
<b>Previous integrity of the area</b>	Information on the pre-assault condition of the injured party.
<b>Exclude a different external cause.</b>	Attempt to determine, based on the mechanism of injury, that there is no alternative cause to the injury.



of the trauma, post-traumatic aetiology, topographical correlation, symptomatic continuity, chronological criteria, previous integrity of the area, and that we can exclude an alternative external cause.

It is, therefore, essential to collect the necessary data in the evaluation to be able to answer these questions (Table 7).

#### 4.4. Assessment of psychological and psychosocial issues

Given that eye injuries have consequences in all spheres of the person when analysing the psychological and psychosocial impacts, it will be helpful to separate the clinical implications (linked to psychological distress and the effect on mental health) and the non-clinical impacts (connected to the different areas of the person's daily life and life project).

##### 4.4.1. Psychological clinical impact assessment.

**Emotional impacts.** Several reviews on the psychological and psychiatric impacts of traumatic eye amputations agree that special attention should be paid to symptoms of acute stress and post-traumatic stress, depressive symptoms and increased alcohol and substance abuse. In addition, several specific psychological syndromes are highlighted and should be explored systematically:

- a. Social anxiety is more marked in women and people between 20 and 35 years of age.
- b. Adjustment problems arising from loss of social status, related to loss of employment, the need to resort to lower-skilled jobs, and difficulties in maintaining previous social and economic status.
- c. Constant, and sometimes disabling, fear of injury to the sound eye and total blindness.
- d. Susceptibility, anger or irritability in interaction with other people.
- e. Phantom pain syndromes may last for months or even years and may have a poor therapeutic response.
- f. Occasional hallucinatory syndromes with false perceptions: white squares, blurred images and other elements that can compromise the person's quality of life.

Explore basic emotions, especially guilt or shame, related to the events (e.g. going to the demonstration) or their consequences (e.g. disfigurement and cosmetic damage and difficulty being in crowded situations). Some of this may be survivor shame if other people had more severe consequences or even died.

**Neuropsychological impacts.** One of the challenges in screening is to distinguish psychological symptoms from neuropsychological impacts. In case of doubt, it is especially relevant to be able to perform imaging tests to rule out brain damage or a

psychometric examination (see specific section below). At least three situations should be distinguished:

- Damage due to a traumatic brain injury leading to dissociative symptoms/amnesia of a psychogenic nature.
- Ruling out previous causes of organic brain damage and determining that the leading cause of neuropsychological impairment is the impact of the projectile. Thus, for example, in people with a history of alcoholism or other causes of neuropsychological alterations, it is essential to determine what the previous damage was and which, therefore, would not be attributable to the impact of the projectile.
- Assess for minor neurological damage or diffuse brain damage associated with a previous head injury. Consultation with a neurologist may be necessary, if such a possibility exists.

##### 4.4.2. Psychological non-clinical impact assessment.

**Ontological or existential.** Numerous non-clinical impacts may significantly impair the victim's autonomy and ability to resume everyday life. In the case of eye injuries, it is particularly relevant to assess:

- Self-confidence, self-esteem, self-image and associated feelings of humiliation and shame.
- Specific and non-specific fears, whether or not related to the traumatic events.
- Ability to communicate with others and share experiences. Balance between expectations of empathy and support, and the possible burnout of family and friends.
- Ability to cope with adaptation and reassessment of life priorities.
- Experiences of helplessness, vulnerability, a tendency towards hopelessness, intolerance to uncertainty, and fear of change.
- Purpose and meaning: life project.
- Expectations regarding judicial processes.

**Related to the life project.** It is essential to be able to explore five aspects:

1. Impacts on affective and couple life, including personality changes, perception of support, changes in communication style, impact on sex-affective relationships and bodily expression, and impact on roles within the couple.
2. Impacts on family life, including how the events have impacted other family members. There can be two types of impacts on the family: (a) vicarious traumatic impacts (i.e. having post-traumatic symptoms from witnessing or hearing the account of what happened) and (b) readjustment of roles within the family.

3. Impacts on personal and professional development (dropping out of school, losing employment, etc.)
4. Economic impacts, including loss of income and social/financial status and loss of career opportunities.
5. Impacts on the political or social project, if relevant, and alternatives. In this sense, the psychological effect (generally positive) of the spaces of vindication in which the person can participate.

In this regard, the use of quality of life scales or scales of impacts associated with eye injuries can be helpful, as set out below.

#### 4.5. Psychometric assessment

Psychometric screening may support the assessment of both clinical and non-clinical impacts.

##### 4.5.1. Psychometric clinical impacts.

Many tools, not specific to eye injury impacts are available for clinical focused screening. Examples include the PCL-5 inventory (Blevins et al., 2015) for assessing post-traumatic symptomatology, the BDI-II questionnaire (Beck, A. T., Steer, R. A., & Brown, 1996) for depressive symptoms and others. Cognitive impairment screening scales are also a valuable tool for making a differential diagnosis by assessing learning, memory, information processing and spatial representation, which may be impaired due to the loss of cognitively stimulating activities due to eye trauma (Lim et al., 2020). In this regard, some helpful and well-known tools are the MMSE (Mini-Mental State Examina-

tion) (Folstein & Folstein, 1975), the MOCA (Montreal Cognitive Assessment) (Nasreddine ZS, Phillips NA, 2005) or the Rey Complex Figure Test.

##### 4.5.2. Psychometric non-clinical impacts.

For the evaluation of non-clinical impacts, the VIVO Questionnaire can support the assessment of those of an ontological or existential nature. (Pérez-Sales et al., 2012). For those related to impacts on the life project, there are some tests focused on the assessment of health-related quality of life and vision-related quality of life (Vélez et al., 2012, (Vélez et al., 2023). It should be noted that these tools are intended for progressive vision loss associated with ageing and not the acute loss associated with less lethal weapons. Still, all of them, especially the NEI VFQ-25, are extremely useful and are highly recommended in the framework of forensic assessment. A synthesis of the most relevant ones, and the differential elements provided by each of them, can be found in Table 8.

##### 4.5.3. Additional strategies for psychometric assessment.

**Systematicity.** The professional assessor must help to identify all the areas of functional impairment and psychosocial impacts, by carrying out a joint review of all the person's daily life activities by analysing (a) a standard day from the moment the person gets up in the morning (b) the person's different areas of identity (work, family, partner etc) (c) significant activities for the person before and after the events (sports, hobbies etc). System-

**Table 8.** Psychometric tests for assessing quality of life associated with eye injury.

Name of the scale	General characteristics
NEI VFQ-25 (National Eye Institute Visual Function Questionnaire - 25) (Broman et al., 2001)	It is the most widely used and referenced scale. Recommend using by default. The original version comprises 51 items; however, the 25-item version is widely validated in different languages and countries. The assessment of visual functioning is presented as a score from 0 to 100, where 0 is the lowest score, and 100 is the best, with subscales by area.
LVQOL (Low vision quality-of-life questionnaire) (Wolffsohn & Cochrane, 2000)	This instrument helps to measure the initial quality of life and the changes that occur with the progression of health status. This scale has 25 items, divided into four dimensions: 1) farsightedness, mobility and illumination; 2) adaptation; 3) reading and precision work; and 4) activities of daily living.
VA LV VFQ-48 (The Vet-Affairs Low-Vision Visual Functioning Questionnaire-48) (Stelmack et al., 2017)	It consists of 48 items. There is an abridged version with 20 items. The original scale was designed to measure the difficulty in performing activities of daily living before and after a visual rehabilitation process.
IVI-28 (Impact of Vision Impairment - 28) (Weih et al., 2002)	Instrument inspired by the WHO International Classification of Functioning, Disability and Health (ICF-2001). The original version contains 32 items grouped into five domains: 1) leisure and work, 2) social interaction, 3) self-care, 4) mobility and 5) reaction to vision loss.

atic screening will decrease inconsistencies, help to raise awareness of deficits and disabilities, and develop recommendations for psychological and functional rehabilitation.

**Triangulation.** This involves corroborating information by interviewing witnesses for their account of events and interviewing family members for the consequences.

### Part 3. Moral, ethical and political dilemmas: Some questions for decision-makers

Documentation of the acute consequences and chronic sequelae of the use of kinetic projectiles and other less lethal weapons shows the devastating impact they have on the lives of the people who suffer their consequences. There is a political responsibility for the fact that a collective security rationale takes precedence over very concrete evidence of severe and irreversible harm to citizens. A single case of eye damage would be enough to justify the prohibition of this type of weapon, because it is the State, the ultimate guarantor of the security of its citizens, which ultimately harms its citizens, knowing that there is a risk and not acting to protect the population<sup>25</sup>. In cases where there would not even be a security risk and people are killed or maimed to defend private property, the ethical responsibility is much greater.<sup>26</sup> Therefore, the question is: how much pain and injury is it ethically acceptable for a State to inflict?

This responsibility is increased when studies indicate that it is *impossible* for kinetic energy projectiles to be used without people being maimed, for at least the following reasons:

- The studies on which the manuals and instructions are based are carried out in laboratory conditions and with expert shooters in optimal environments.<sup>27</sup> The reality is that

the projectiles will be used by shooters who shoot under stressful conditions, often in fear, at targets in groups that are constantly moving and where, consequently, the distance is variable. It is impossible to guarantee precisely the area of impact.

- There are imponderable elements of individual vulnerability. Thus, for example, impacts in the lumbar region in a person who has only one kidney or shots in areas close to the spine in a person with osteoporosis.
- The distance in the human body between the highest and lowest risk zones can be centimetres. Thus, an impact on the sternum is only a few centimetres away from a rib impact (which can cause pneumothorax and death), an abdominal impact (liver or spleen burst and high probability of death) or a facial impact (blunt trauma, eye burst, penetrating brain injury).
- Certain projectiles - such as the lead-core projectiles used by Israel or the pellet-firing projectiles used in Chile and India - have erratic and unpredictable ballistic behaviour. The chances of hitting the person in areas not intended by the shooter, of hitting other people behind or to the side, or passing by, are high.
- Handing a police officer a weapon classified as “non-lethal” creates an expectation of safe use (Rocher, 2020) which makes it very easy for safety limits to be breached. Moreover, as has been documented on numerous occasions,<sup>28</sup> it encourages the police to make a vindictive use of the weapon in pursuit of a punitive purpose in the conviction of its “non-lethality”. It is common sense that riot police units attract people with differential personality traits.
- The environment of the use of these weapons, protected by superior orders and under supposed legitimacy, favours, in psychological terms, two well-known phenomena: the excessive use of violence associated with the dilution of responsibility<sup>29</sup> and the guarantees of impunity related to the mandate to use violence.<sup>30</sup>

25 The ethical dilemma can be summarised as follows: replacing a lethal weapon (firing live ammunition at citizens) with a *less lethal* weapon means replacing the certainty of injury with the probability of injury. Turning certainty into “probability” is the ethical endorsement of the authorities who acquire and endorse the use of these weapons, and it is exactly the ethical objection of the citizens’ organisations that consider them unacceptable.

26 The UN Human Rights Committee rightly points out in its Comment #36 that the use of potentially lethal weapons for the maintenance of public order may only be justifiable as an extreme measure to protect life or prevent extremely serious injury. In any other case the harm caused is morally unacceptable.

27 On a shooting range, the shooter is at a distance of at least 10 metres from a static target under optimum atmospheric and noise conditions and in the absence of distracting elements. The opposite conditions of a demonstration. In addition, as has been demonstrated (Rocher, 2020), it is practically impossible to estimate real distances in real stress environments.

28 See Case Students of Soacha during the Agrarian Strike in Bogota, where some received up to 20 electric shocks followed by Taser / Case Roger Español on 1 October 2017 in Barcelona where he received up to 3 shots at close range in response to what the police interpreted as provocation / Case Salha Vermella in Rio de Janeiro where some of the people arrested received up to 5 times pepper spray in the eyes in a span of two minutes for what the police interpreted as “resistance” to being arrested.

29 Studies of dilution of responsibility indicate that a person is much more likely to perpetrate violence when it takes place in a group setting and that it is much more difficult, if not impossible, to assign individual responsibility.

30 The legitimacy that labels actions of lethal violence as “excessive

- In most countries, the protocols for using these weapons are neither public nor available for monitoring, which prevents effective citizen control of their use.

But beyond these *operational*, ethical questions, there are *political*, ethical questions, which are what should guide institutional decision-making: Why do States, despite the evidence, continue to use these weapons, and why is there a discourse that these are “more humane” weapons, seeking precisely an ethical justification for the use of weapons against civilians in the exercise of the right to protest? The underlying logic considers people who “disturb order” because they hold divergent opinions to be “enemies”, who should be punished as individuals and in terms of the dissuasive and exemplary effect on other potential citizens.

### Conclusions

Taken as a whole and as illustrated by the case studies presented in this Special Section of Torture Journal, less lethal weapon injuries destroy lives. The functional, aesthetic, emotional, familial, economic and moral damage is immense. Despite this, experience from a range of States show the enormous difficulties in making a legal claim - criminal or administrative - against the State for the damage caused. The origin of the small number of complaints and cases that have obtained a favourable ruling is due to a complex tangle of factors of all kinds.

In response to this need, this editorial has comprehensively reviewed the legal and medico-legal aspects of less lethal weapon injuries in the framework of social protest. Areas that do not usually appear in academic publications have been covered with the idea of giving an overview and helping professionals and victims’ organisations in their work.

It is a wide-ranging review and could give the impression that the field is overly complex. This is not our intention. It is no different from other contexts of human rights violations, although it has some specific elements that are important to consider. When these are taken into account, it is possible to bring about legal proceedings with significant chances of success.

Perhaps it is time to articulate networks and open spaces for exchanging knowledge - to which Torture would like to contribute.

### In this issue...

This issue features a special section on the use of less lethal weapons and in particular the use of kinetic energy projectiles as a form of ill-treatment or torture.

Matthew McEvoy, Neil Corney, Marina Parras and Rohini Haar present a comprehensive review of the state of the art from a medico-legal perspective based on Omega Foundation’s experience. The UN Special Rapporteur on Torture, Alice Edwards, recalls from her recent report to the UN General Assembly the existence of instruments that are inherently constitutive of torture in relation to the use of less lethal weapons, and calls, in her contribution to the Journal, for their international prohibition.

Marie Bresholt and the Dignity medical team conduct a comprehensive review based on case studies published in the literature on the health impacts of electric shock weapons. This goes hand by hand with the editorial where we have comprehensively reviewed elements related to the litigation of cases and especially to the forensic assessment of eye injuries based on the Istanbul Protocol.

The reviews are followed by case studies with articles by Malose Langa and colleagues (South Africa), Jose Tejada and colleagues (Chile), Anaïs Franquesa and colleagues (Spain), and the MOCAO survivor’s organisation (Colombia). All of them are dominated by the perspectives of the survivors and the enormous legal, medical and psychosocial difficulties faced by victims in all countries. In the Perspectives section, Carles Guillot gives us a first-person testimony of his struggle as a victim of traumatic eye injury and the struggle of the collective he represents.

Within the regular articles section, Jörg Alfred Stippel presents a review of cases of ill-treatment and torture in the Chilean penal system and Justine Dee a review of evidence-based physical therapies in torture survivors.

Finally, there are contributions on the situation of solitary confinement in Turkey based on a visit of a delegation of experts to the country, the situation of the high-security internationally contested prison system in El Salvador by Professor Lutz Oette, the situation of mentally ill persons in prisons in Kosovo by Niman Hajdari, and a letter by Andres Gautier on the situation in the occupied territories of Palestine.

The use of less lethal weapons as a form of ill-treatment or torture is probably one of the most comprehensive and complex issues to have emerged in the field in recent years and we are proud of the important role played by survivors in many of the articles we publish: Undoubtedly a distinct element that we want to maintain and enhance in the future.

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use of force” semantically minimises the gravity of the facts and their consequences, allowing for decision-making under pressure to adopt positions of greater violence against citizens.

## References

- Amnesty International, & Omega Research. (2023). "My eye exploded". *The global use of kinetic impact projectiles*.
- Beck, A. T., Steer, R. A., & Brown, G. (1996). Beck Depression Inventory–II (BDI-II). *APA Psychometric Database*. <https://doi.org/https://doi.org/10.1037/t00742-000>
- Blevins, C. A., Weathers, F. W., Davis, M. T., Witte, T. K., & Domino, J. L. (2015). The Posttraumatic Stress Disorder Checklist for DSM-5 (PCL-5): Development and Initial Psychometric Evaluation. *Journal of Traumatic Stress, 28*(6). <https://doi.org/10.1002/jts.22059>
- Broman, A. T., Munoz, B., West, S. K., Rodriguez, J., Sanchez, R., Snyder, R., & Klein, R. (2001). Psychometric properties of the 25-item NEI-VFQ in a Hispanic population: Proyecto VER. *Investigative Ophthalmology & Visual Science, 42*(3), 606–613. <http://www.ncbi.nlm.nih.gov/pubmed/11222517>
- Kingdon J. W. (1995). *Agendas, alternatives and public policies*. Harper Collins, New York
- Lim, Z. W., Chee, M. L., Da Soh, Z., Cheung, N., Dai, W., Sahil, T., Tao, Y., Majithia, S., Sabanayagam, C., Chen, C. L. H., Wong, T. Y., Cheng, C. Y., & Tham, Y. C. (2020). Association between Visual Impairment and Decline in Cognitive Function in a Multiethnic Asian Population. *JAMA Network Open, 3*(4), 1–12. <https://doi.org/10.1001/jamanetworkopen.2020.3560>
- Nasreddine ZS, Phillips NA, B. V. (2005). The Montreal cognitive assessment, MoCA: a brief screening tool for mild cognitive impairment. . 2005;53:695-9. *JAGS, 53*, 695–699.
- Pérez-sales, P., Eiroa-orosa, F. J., Olivos, P., Barbero-val, E., Fernández-liria, A., & Vergara, M. (2012). Vivo Questionnaire : A Measure of Human Worldviews and Identity in Trauma , Crisis , and Loss — Validation and Preliminary Findings. *Journal of Loss and Trauma : International Perspectives on Stress & Coping, February 2013*, 236–259.
- Rocher, P. (2020). *Gazer, mutiler, soumettre: Politique de l'arme non létale*. (La Fabrique Editions. (ed.))
- Stelmack, J. A., Tang, X. C., Wei, Y., Wilcox, D. T., Morand, T., Brahm, K., Sayers, S., & Massof, R. W. (2017). Outcomes of the Veterans Affairs Low Vision Intervention Trial II (LOVIT II). *JAMA Ophthalmology, 135*(2), 96. <https://doi.org/10.1001/jamaophthalmol.2016.4742>
- Velasquez, J., Sanchez, R., Severin, I., & Sferrazza, P. (2022). *Estudios interdisciplinarios para investigar las violaciones a los derechos humanos por armas menos letales* (T. Lo Blanch (ed.)). Tirant lo Blanc.
- Vélez, C. M., Ramírez, P. B., Oviedo-Cáceres, M. D. P., Lugo Agudelo, L. H., Posada, A. M., Hernández-Padilla, M. L., Valverde, E. A., & Suárez-Escudero, J. C. (2023). Psychometric Properties of Scales for Assessing the Vision-related Quality of Life of People with Low Vision: A Systematic Review. *Ophthalmic Epidemiology, 30*(3), 239–248. <https://doi.org/10.1080/09286586.2022.2093919>
- Weih, L. M., Hassell, J. B., & Keeffe, J. (2002). Assessment of the impact of vision impairment. *Investigative Ophthalmology & Visual Science, 43*(4), 927–935. <http://www.ncbi.nlm.nih.gov/pubmed/11923230>
- Wolffsohn, J. S., & Cochrane, A. L. (2000). Design of the low vision quality-of-life questionnaire (LVQOL) and measuring the outcome of low-vision rehabilitation. *American Journal of Ophthalmology, 130*(6), 793–802. [https://doi.org/10.1016/S0002-9394\(00\)00610-3](https://doi.org/10.1016/S0002-9394(00)00610-3)

# State violence against protesters: Perspectives and trends in use of less lethal weapons.

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## Key points of interest:

- Certain types of less lethal weapons are increasingly being used to disperse peaceful protesters, in violation of international human rights law, norms and policing standards.
- Though referred to as 'less lethal' or 'non-lethal', these weapons have caused numerous serious injuries and deaths.

## Abstract:

*Introduction:* In recent years mass protest movements have taken to the streets in many countries across the world. Despite strong international and domestic legal protections for the right to freedom of peaceful assembly and other fundamental human rights, entire assemblies are frequently labelled violent and less lethal weapons are used to disperse them. *Methods:* This article examines the weapons often used by police against public assemblies. Focusing on striking weapons (batons), chemical irritants, kinetic impact projectiles and stun grenades, the article uses examples from various countries to illustrate how these weapons are being used and the associated human rights and health impacts. *Results:* Worrying trends identified include the use of dangerous or untested equipment, such as thermal foggers to deploy chemical irritants; the use of inherently abusive weapons, such as whips or sjamboks; and the increasing use of certain types of munitions, specifically indiscriminate kinetic impact projectiles. *Discussion:* The article seeks to support medical and legal professionals becoming more familiar with the weapons being used in the countries they practice in, the effects of those weapons, and clinical aspects in the presentation and care of those exposed.

**Key words:** Less lethal weapons, tear gas, rubber bullets, police, protest

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## Introduction

With the rapid advance of mobile technology and social media in recent decades and the growth of citizen journalism, we have grown accustomed to seeing protests around police behaviour, labour rights, climate, and the pandemic being met with violence. Scenes of fleeing protesters enveloped by clouds of smoke or drenched with water cannon have sparked global conversations on the role of law enforcement in managing protests and the dangers associated with their use of force.

This article examines some of the less lethal weapons most frequently used and misused against protesters around the world, from the perspective of international use of force standards and the absolute prohibition of torture and other cruel, inhuman and degrading treatment or punishment (hereinafter, “torture and other ill-treatment”). Not all police use of force is unlawful; in fact, law enforcement officials are sometimes legally required to use force, for example, to defend an individual or group against violent acts. However, states are under an obligation to ensure that their officials are held accountable for their acts, and this is particularly important where force is used, given the potentially irreversible effects.

The official justification for the use of force against protesters is frequently the maintenance of public safety or order, and this is sometimes legitimate, but all too often the underlying motive is to silence dissent, both directly, by stopping the protest, and also indirectly, by intimidating others into refraining from participating in future protests. This becomes evident when the official response to ‘pro-government’ protests is contrasted with the response to protests that challenge or criticise the government, with the former frequently facilitated with a small police presence and no recourse to violence, while the latter are more likely to be violently dispersed (see, for example, Voule, 2023, paras. 66-67). Thus, force is used either unnecessarily, to discriminate against, punish, injure and disfigure those not engaged in violence, or disproportionately and/or excessively against those who are. This type of state violence robs a sector of the public of their agency and their voice, and prevents them from convening in the public space to exercise their fundamental rights to the freedom of expression and peaceful assembly. In all of these scenarios, the state uses violence and the infliction of pain and suffering to assert its dominance.

Though the vast majority of assemblies pass off peacefully, excessive force has been documented in all regions, resulting in large numbers of deaths and serious injuries. Such injuries include thousands of instances of life changing disfigurement and disability every year worldwide. Between 2019 and 2023, small protests, demonstrations, strikes and mass protest movements were met with state-sanctioned police violence and ex-

cessive use of force in many countries, including Belarus, Bolivia, Chile, Colombia, France, Hong Kong, India, Indonesia, Iran, Lebanon, Nigeria, occupied State of Palestine, Peru, Sri Lanka, Sudan, Thailand, among others. Black Lives Matters protests shook the United States (US) and spread around the world, frequently facing the kind of police violence and repression that spurred the protests in the first place (Physicians for Human Rights, 2020).

This article focuses on “less lethal” weapons. These are weapons which, in the course of expected or reasonably foreseen use, carry a lower risk of causing death or serious injury than firearms (United Nations Office of the High Commissioner for Human Rights, 2020b, p. 45). Recent years have seen a growing body of evidence gathered concerning the health impact of less lethal weapons, and it is crucial that health professionals address any knowledge gaps in this area and remain abreast of further developments, as novel mechanisms of injury will inevitably continue to emerge (International Network of Civil Liberties Organizations et al, 2023, p. 152).

Notwithstanding the continuous development of new less lethal technologies, the types of weapons most frequently used to police public gatherings, and whose use continues to cause serious injuries and death, have essentially remained technologically unchanged and been in use for decades and evidence suggests their use is increasing. This article will explore recent trends in the use of striking weapons, kinetic impact projectiles, chemical irritants and stun grenades, as well as presenting general information on the associated health impacts and the treatment of those affected. The text is intended to inform professionals acting in various disciplines.

Technical knowledge of less lethal weapons is frequently carefully guarded by law enforcement agencies, and this acts as a barrier to effective oversight. With the appropriate knowledge and conditions, health professionals can help to address this imbalance. It is essential that health professionals faced with the assessment of patients injured by less lethal weapons have the necessary expertise and technical knowledge to be able to detect symptoms and signs of injury and be able to support and care for their patients effectively. Similarly, legal professionals, activists and survivors who understand less lethal weapons, their health impacts and the standards governing their use are well-placed to cast a more effective critical eye over instances involving the use of force.

This article will first consider several contextual interlinked issues which frequently result in inappropriate or unsafe weapons, equipment and tactics being deployed by law enforcement officials. Then we will discuss the several less lethal weapons that are most frequently used to police public assemblies: ba-

tons, kinetic impact projectiles, chemical irritants and disorientation devices. For each of these weapons, we review their mechanism of action, health concerns and several notable cases globally where they have been used and/or caused injuries.

### Contextual issues

While the use of force by law enforcement officials is governed by international law and policing norms and standards, the weapons and equipment they utilise are not. There are no international technical, manufacturing, testing, performance or trade standards for less lethal weapons (Dymond et al, 2014). This absence has resulted in a very wide range of products being marketed directly to law enforcement, some of which are inherently unsuitable and should be prohibited (for example, spiked batons and shields, or weighted restraints), and others with widely varying performance characteristics, resulting in unacceptable risk of injury (for example, multiple kinetic impact projectiles, or high concentration chemical irritant sprays). Although no international standards exist, some states have na-

tional standards for some weapons, for example, the UK has a technical standard for personal chemical irritant spray (United Kingdom Home Office - Centre for Applied Science and Technology, 2014) and the US National Institute of Justice maintains a performance standard for handcuffs and standards for certification (US National Institute of Justice, 2017 and 2019). The absence of international standards, administered by globally recognised standards authorities, continues to result in law enforcement agencies often having to rely on manufacturer data and company marketing alone.

Secondly, selection and testing of less lethal weapons prior to deployment can reduce the risk of subsequent harms. However, such processes are often inadequate or absent in states with fewer policing resources, resulting in inappropriate or dangerous weapons being deployed. The UN Human Rights Guidance on Less-Lethal Weapons and Related Equipment in Law Enforcement (hereinafter, the “UN Guidance”) clearly establishes states’ responsibility to take a precautionary approach and conduct testing, ideally by an independent body,

**Figure 1.1.** Law enforcement officials attired in military-style uniforms with armoured vehicles. Source: Jamelle Bouie, “swat team, fully assembled”. 13 August 2014. Ferguson, Missouri. CC BY 2.0.





of all less lethal weapons and law enforcement equipment prior to its procurement and the equipping of law enforcement officials (United Nations Office of the High Commissioner for Human Rights, 2020b, section 4.2). The Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests states that “untested or unproven new technologies... should not be deployed during protests” (Voule, 2024, para. 33). Testing should evaluate the effects of all reasonably likely or expected uses of the weapons, and particular consideration should be given to assess the potential effects on persons who may be especially at risk, for example children, the elderly, pregnant persons, the medically unwell. Ongoing monitoring of injuries caused by less lethal weapons is crucial in providing data to feed back into the testing and selection process, as well as to inform changes in policy, procedure and guidelines for use.

Thirdly, the trade in law enforcement equipment is poorly regulated by states, resulting in inappropriate goods being transferred to abusive regimes, where they may be used to commit human rights abuses. Many states do not control the trade (import and export) of law enforcement equipment, beyond those classified as ‘conventional arms’, such as small arms, ammunition and certain chemical irritants (see, for example, The Wassenaar Arrangement, 2020). This often excludes such goods as pepper and tear gas sprays, kinetic impact projectile munitions, electric shock weapons, water cannon, batons, and restraints, as well as other weapons used in policing public assemblies. There have, however, been important advances made in this area including at EU level and most recently internationally (see Omega Research Foundation, 2023), such trade control standards are a vital component in controlling the trade (and use) of less lethal weapons.

A fourth key cause underlying violent policing of protests is the militarisation of public security that has occurred in response to perceived “new threats”, particularly terrorism and drug trafficking (Centro de Estudios Legales y Sociales, 2018). Militarisation of public security encompasses both military personnel carrying out law enforcement duties, and the use of military tactics and equipment by law enforcement officials. The inherent differences between the military and law enforcement paradigms mean that this blurring of roles, tactics, and equipment can be problematic. Where soldiers are primarily trained for combat and to kill enemy combatants, law enforcement officials must instead fulfil their duty “by serving the[ir own] community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession” (United Nations, 1980). Figure 1.1 is illustrative of the type of transformation many police forces have

undergone, with traditional uniforms being replaced by military-style fatigues, helmets and combat boots, and assault rifles being carried routinely rather than exceptionally.

Finally, police training on managing crowds and using crowd control weapons is often inadequate and focuses on protecting property, rather than on their fundamental human rights obligations and strict limits on the use of force. Whilst police may receive extensive training and re-training on firearms, they frequently receive less than an hour or two of total training on the use of a range of crowd control weapons from pepper spray to projectiles. As new weapons are added to police arsenals, each with different uses, firing ranges, safety profiles and potential injuries, there is rarely adequate additional training, or refresher training, and a lack of minimum proficiency standards. Moreover, especially in States healing from a colonial past, police are often trained based on mentalities, laws and policies entrenched in the era of Empire and colonization, rather than with a mission to support the communities they live in and serve.

## Less Lethal Weapons

### *Hand-held Kinetic Impact / Striking Weapons*

#### *Global context*

In a report documenting the misuse of striking weapons and batons worldwide, Amnesty International with assistance from Omega Research Foundation verified over 188 videos of incidents of the misuse of striking weapons including police batons, lathis (long sticks), sjamboks (rigid whips) and improvised weapons in 35 countries, covering all regions of the globe. This highlighted examples of striking weapons, including police batons frequently used for torture and other ill-treatment, both in places of detention and outside of custodial settings, including violent crackdowns on mass protests in countries as diverse as Belarus, Colombia, France, India and Myanmar (Amnesty International, 2021). The following examples illustrate the widespread and contemporary nature of such abusive practices.

In the US, during the 2020 nationwide Black Lives Matter and anti-police violence protests, human rights monitors reported the widespread abusive use of batons to beat protestors. Such violence included incidents where police, standing above a crowd on police vehicles, used batons to beat people’s heads, a practice which carries a high risk of causing serious injury. This violence often occurred when no threat existed or when protestors were detained in a police cordon or ‘kettle’ and unable to escape (Human Rights Watch, 2020a).

**Figure 1.2.** Plastic sjambok. Source: OwenX. "A 90 cm (3 ft) plastic sjambok used by South African Police". 30 December 2005. Ontario, Canada. CC BY-SA 3.0.



In Iran, widespread protest erupted in September 2022 following the death of Mahsa Amini aged 22, who was arrested for wearing an improper hijab. The violent security force responses to the protests included widespread use of beatings, for example including the death of 16-year-old Nika Shakarami, whose skull was reportedly severely damaged with injuries consistent with being struck repeatedly on the head (Chulov, 2022).

Whips have also been used in certain states, such as by the Central Cossack Battalion in Moscow, who attacked and whipped peaceful protestors and journalists in May 2018 (Gershkovich, 2020; European Centre for Press and Media Freedom, 2018). Long plastic or animal hide whips (sjamboks), as shown in Figure 1.2, were used during the policing of Covid-19 restrictions in South Africa, where reporters filmed police assaulting civilians with sjamboks (Reddy and Allison, 2020), and in Uganda, where police were photographed using whips to "clear" market vendors (Olewe, 2020).

#### *Characteristics and techniques*

Hand-held kinetic impact weapons, also known as striking weapons, include a range of specially manufactured batons and truncheons. Batons are perhaps the oldest type of weapon in use by law enforcement and are ubiquitous worldwide due to their low cost. The visual message from an officer wielding a baton is universally understood as a sign of authority with the baton as a pain compliance tool.

Specially manufactured weapons can be made of rubber, wood, plastic, or metal. They vary in width and length, from 20cm for close use, up to 2m for greater stand-off distance. Batons can be straight, extendable/expandable (collapsing to a short length for ease of carrying or concealment), or side-handled (commonly referred to as a tonfa). Longer batons can deliver greater impact energy, increasing the risk of serious injury. Use of overarm strikes or from an elevated position, such as from a police horse, or standing on a police vehicle, increases the risk of fatal head injuries caused by baton strikes.

Other hand-held kinetic impact weapons may be made of natural materials, such as the bamboo cane 'lathi' in India, or the rattan cane used in various Asian jurisdictions. Sticks and clubs are also widely used by law enforcement, and the use of short and long whips (sjamboks) has also been documented in some countries. According to the UN special Rapporteur on torture, whips, sjamboks and lathis fulfil no legitimate law enforcement purpose that cannot be achieved through the use of other less harmful means (Edwards, 2023, Annex I).

Striking weapons can be used offensively or defensively. They are used by law enforcement officials to strike a subject to cause physical pain or to threaten physical pain in order to force them to comply or to deter them from an action. Such weapons should only ever be used on the larger muscle groups on the limbs; even then, striking weapons can cause severe bruising,

lacerations and broken bones, especially if the joints are targeted or hit. They can also be used defensively by law enforcement officials as a blocking instrument, for instance, to protect themselves from blows from assailants. The use of a baton, and the force inflicted, is greatly dependent on the individual user, and is dependent on their height, strength, technique (e.g. side or over-arm strikes), and their training and oversight.

Batons are also used as a tool of restraint, including to immobilise limbs or hold people down. Dangerous and potentially lethal 'neck holds' or 'carotid holds' using batons have been used by law enforcement officials to detain and subdue individuals. However, the UN Guidance states that neck holds should "not be employed, as they present an especially high risk of death or serious injury as a result of compression of large blood vessels or the airway" (United Nations 2020, para. 7.1.5).

Officers must reassess the need for any further strikes after each strike, to make sure additional force is strictly necessary and proportional. Nonetheless, media images and footage of protests often show law enforcement officials repeatedly striking and beating people, often individuals who are on the ground, or chasing people whilst repeatedly striking them, including on the head.

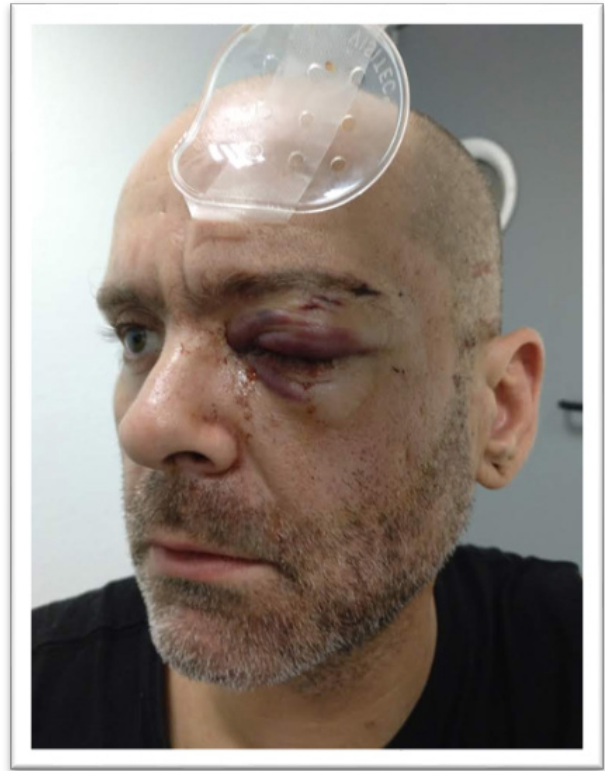
#### *Health concerns*

Batons and other such weapons can cause serious injury and death. The fundamental mechanism of injury is direct blunt force trauma to a part of the body. Depending on the number of impacts and their intensity, different structures may be affected.

**Figure 1.3.** Loss of teeth due to blunt trauma with a striking weapons. Source: ©Centro de Atención a Víctimas de Tortura Sir[a].



**Figure 1.4.** Ruptured eyeball caused by a projectile impacting the eye. Source: ©Centro de Atención a Víctimas de Tortura Sir[a].



While bruising and contusions are common after baton use, these must be carefully examined to ensure that deeper injuries are not present. On the skin, a contusion will cause local reddening, depending on the intensity, bruising and even open wounds, with or without bleeding. The main symptom is pain, which can be measured using pain scales such as the VAS scale.<sup>1</sup> Higher impact energy may injure deeper structures. If muscle tissue is affected, there can be local inflammation, swelling or haematoma, intense pain, as well as muscle strain or weakness. In the case of large muscles or multiple muscle involvement due to repeated trauma, rupture of muscle fibres can result in flooding of the bloodstream with myoglobin (muscle proteins)

1 VAS (visual analogue scale): This consists of a horizontal line of 10 centimetres, at the ends of which are the extreme expressions of pain. The left end indicates the absence or lesser intensity and the right end indicates the greater intensity. The patient is asked to mark on the line the point indicating the intensity and it is measured with a millimetre ruler. The intensity is expressed in centimetres or millimetres. It will be mild up to 4 cm, moderate from 5-7 cm and severe if greater than 7 cm.

**Figure 1.5.** Federal law enforcement agents use a thermal fogger during a Black Lives Matters protest. Source: ©Doug Brown, ACLU of Oregon. 29 July 2020. Portland, Oregon, USA.



which can lead to collapse of the kidney causing renal failure (rhabdomyolysis).

Bone fractures differ depending on the type of bone and the main symptoms are intense pain and functional disability (inability to perform certain movements). Among the most fragile bones and therefore most susceptible to fracture are the facial bones (bones of the nose, zygomatic bone), the lower or floating ribs and the fingers and toes (phalanges). When the trauma occurs to a joint, it will usually be accompanied by joint effusion, with local swelling, haematoma and functional disability. Other musculoskeletal injuries, such as spinal cord injuries and nerve injuries can also be the result of direct blunt trauma.

In some parts of the body, deeper organs may be affected, such as the liver or spleen, adding to the potential lethality. Severe injury and death most frequently result from strikes to the head and face, due to skull or facial fractures, ruptured eyes or traumatic brain injuries accompanied by internal haemorrhage. The risks to health are worsened when there are multiple strikes

(i.e. beatings), or when the target is not able to shield themselves or maintain a defensive position (i.e. handcuffed).

In caring for those who have been struck by kinetic impact weapons, the Advance Trauma Life Support framework may be followed. This should include a rigorous history when possible, a thorough and systematic physical inspection of the skin, imaging tests in the case of suspicion of deeper injuries (X-rays, ultrasounds and CT scans) as well as laboratory tests to rule out rhabdomyolysis or renal failure. It is important that clinicians evaluate for internal bleeding, especially for any pain that feels different from a temporary bruise, or for symptoms such as blood in the urine, swelling, severe pain or difficulty moving or breathing. For minor injuries, treatment will usually be aimed at pain management with analgesics and anti-inflammatory drugs and local treatment with cold packs and immobilisation if necessary.

#### *Chemical Irritants*

Typical images in media reports of the policing of assemblies or protests shows streets filled with clouds of white or off-white /

yellow smoke, or police using aerosol sprays against individuals or crowds. These are two examples of chemical irritants, one of the most widely used less lethal weapons in law enforcement worldwide, with almost every country using some form of chemical irritant weapon in certain contexts.

*Global context:*

In a report documenting the misuse of tear gas worldwide, published in June 2020 (updated in February 2021), Amnesty International with assistance from Omega Research Foundation verified over 500 videos of more than 100 events in some 31 countries and territories where tear gas has been misused (Amnesty International, 2020a). Incidents included cases of security forces firing projectiles and grenades into cars, inside a school bus and in hospitals, residential buildings, metro stations and shopping centres, as well as directly at individuals, and against others in confined spaces, as well as excessive quantities being fired.

The use of large quantities of chemical irritant has increasingly been reported, either by the firing of tear gas projectiles and grenades, or dispersal using sprayers and other equipment.

During escalating protests in 2019 in Hong Kong, police used chemical irritants in large quantities, firing 800 tear gas projectiles in a single day, and in some cases in confined spaces. For example, on 11 August 2019, police fired multiple rounds of tear gas inside the Kwai Fong Mass Transit Railway station, a confined space with limited exits (Omega Research Foundation and Amnesty International, 2020). Tunisian police used large amounts of launched tear gas cartridges during unrest in the city of Tataouine between 23 and 26 June 2020. Volunteers reportedly collected and counted almost 18,000 cartridges from the city after the operation had finished. People were affected in hospitals, places of worship and their homes, with at least 180 people reportedly admitted to hospital for emergency treatment after inhaling tear gas and 26 others were injured when struck with tear gas projectiles (Amnesty International, 2020b).

In 2020 Federal Agents from the Department of Homeland Security were deployed to protect federal property in Portland, Oregon. Protests occurred over many weeks and federal agents repeatedly deployed massive quantities of chemical irritants and smoke including via thermal foggers, as shown in Figure 1.5 – hand-held devices producing large volumes of tear smoke from water or oil-based solutions, as well as from ‘smoke pots’ – open pots of burning incandescent substance (believed to be HC – Hexachloroethane) that produced dense clouds of grey/white smoke. Protesters reported a wide range of respiratory and/or reproductive health impacts after attending protests

and being exposed to the chemical irritants, including unusual effects on menstrual cycles (see Torgrimson-Ojerio et al, 2021).

States must give due attention to the risk of the use of less lethal weapons causing panic, including the potential for a stampede (United Nations Office of the High Commissioner for Human Rights, 2020b, para. 6.3.4). In October 2022, Indonesian police began firing tear gas projectiles directly into the stands, when football supporters invaded the pitch after a match in Malang, East Java. The tear gas caused supporters to panic and attempt to flee the ground, heading to the exits, some of which were locked. The panic and stampede caused by the tear gas resulted in a crush. At least 132 people died, including 32 children and two police officers, and over 600 were injured. (Tempo.Co, 2022, Ratcliffe, 2022).

Direct firing of grenades of projectiles at individuals can result in serious injuries or death via blunt or penetrative trauma. Such launched projectiles or grenades are designed to be launched into open areas to land on the ground and disperse chemical irritant. However, their use against individuals continues to be reported. Particularly horrific injuries and deaths were reported in Iraq in 2019, when ‘anti-riot police’ and other security forces in Baghdad fired grenades, referred to by local people as ‘smokers’, directly at individuals. The 40mm military grade, heavy, Iranian- and Serbian-manufactured grenades caused severe injuries and many deaths when the metal projectiles impacted and penetrated the skull (Hoz et al, 2020; Amnesty International, 2019).

*Characteristics and techniques:*

Chemical irritants are highly potent substances that produce sensory irritation and pain in the eyes, skin and upper respiratory tract. These properties are utilised to deter individuals from violence, disperse crowds or otherwise gain compliance with police orders through the infliction of pain. The chemicals most commonly used is the irritant agent chlorobenzalmalononitrile (CS) and its derivatives and similar compounds (CS1, CS2) – often called tear gas, though the active agent is actually distributed as a fine powder – and the inflammatory agents Oleoresin capsicum (OC) or its synthetic version, N-Vanillylnonamide (pseudocapsaicin) (PAVA) – often called pepper spray. A number of other irritant agents, such as 1-chloroacetophenone (CN) and dibenzoxazepine (CR), are marketed and held by States, but are not commonly encountered (see Organisation for the Prohibition of Chemical Weapons 2019, Annex 4).

Chemical irritants are delivered via a wide range of methods and means. These include handheld aerosol sprays, weapon fired spray, shoulder-worn and backpack sprayers, handheld or vehicle mounted smoke generators or foggers, hand-thrown grenades, weapon-launched projectiles and grenades, as well

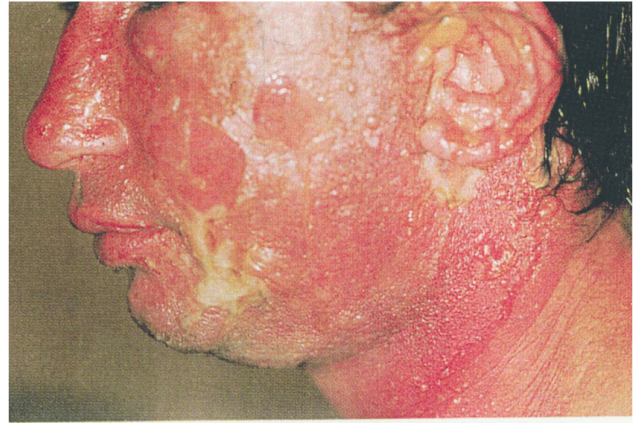
as via water cannon and more recently via unmanned air or ground vehicles. Handheld aerosol sprays range in size from 25ml to 500ml, sometimes more, while shoulder-worn and backpack-style sprayers and smoke generators generally have a much larger capacity and can cover a wider area often in a very short time. Hand-thrown and weapon-launched projectiles/grenades and water cannons can be used from greater ranges and can be used to contaminate a wide area.

A particular issue with the majority of chemical irritant sprayers / foggers is that they have no dose control or cut-off trigger mechanism to control the amount dispersed. Under international laws of law enforcement only the minimum amount of force should be used (and only when strictly necessary and proportionate to the threat) and force must cease when the threat from the individual ceases. In operational practice, law enforcement officials are expected to use the minimum 'effective dose', i.e. one very short burst of spray, and then re-assess the threat. However, sprays are frequently continually discharged at individuals or groups, dispersing large quantities of chemical irritant of unknown concentration. Design changes to sprayer equipment, to introduce 'dosing' triggers that release only small quantities with each trigger pull, might help overcome this issue but are not generally in use at the time of writing.

A range of factors can determine the effects of chemical irritants, including the type of chemical agent and means of delivery used, the location and environmental conditions in which they are used (heat, humidity), and the concentration and quantity of irritant. The amount of active irritant agent in products available to law enforcement officials varies widely, and manufacturers frequently offer a range of percentages for any given product, or offer custom fills for customers. This results in those using, affected or treating the affected not knowing what amount of chemical irritant has been delivered, or can lead to speculation and confusion as to the type of irritant being used, and may also result in unusual medical effects being encountered. For example, Pepper-Ball, a commonly used compressed gas launcher system, which delivers chemical irritant via 0.68 calibre plastic encapsulated projectiles, advertises a range of projectiles with a wide range of percentage of irritant: "VXR LIVE-X a more concentrated formula, containing approximately 10x the PAVA of the VXR LIVE projectile" (Pepperball, 2023).

Chemical irritants are indiscriminate in nature, and the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has warned that they fail to differentiate "between demonstrators and non-demonstrators, healthy people and people with health conditions" (Kiai, 2012, para. 35). Even the use of small, handheld sprays risks affecting innocent bystanders in a public gathering.

**Figure 1.6.** Severe chemical burns and blistering following exposure to French CS spray. Source: Omega Research Foundation, 2003, *Crowd Control Technologies : An Assessment Of Crowd Control Technology Options For The European Union*.



Severe involvement of the face 24 hours after exposure.

International human rights bodies have created strict standards concerning the use of chemical irritants. The UN Guidance states that chemical irritants, including those delivered via handheld sprays, should only be used when there is an imminent threat of injury, and warns against repeated or prolonged exposure to irritants (United Nations Office of the High Commissioner for Human Rights, 2020b, paras. 7.2.3 and 7.3.5). The United Nations *Resource book on the use of force and firearms in law enforcement* (hereinafter UN Resource Book) also recommends against chemical irritants being used against the same people several times in a short time period, or in confined spaces (United Nations Office on Drugs and Crime and Office of the High Commissioner for Human Rights, 2017 p. 88). The same document stresses that delivery for wider areas should only be used "for dispersing groups that present an immediate and direct threat and when conventional methods of policing have been tried and have failed, or are unlikely to succeed" (United Nations Office on Drugs and Crime and Office of the High Commissioner for Human Rights, 2017, p. 87).

The Chemical Weapons Convention bans the use of chemical irritants, which it refers to as "riot control agents" (RCAs), as a method of warfare (Organisation for the Prohibition of Chemical Weapons, 1993, Art. I.5). The same instrument permits the use of RCAs for "law enforcement including domestic riot control purposes", provided they are used in "types and quantities" consistent with such purposes (Organisation for the Prohibition of Chemical Weapons, 1993, Arts. II.9 and II.1.a).

*Health concerns:*

Chemical irritants primarily affect the skin and mucous membranes. When a person comes into contact with a chemical irritant it mixes with moisture on the skin, or in the eyes and respiratory and oral tracts, and activates the TRPA 1 and TRPV1 pain receptors located in the peripheral nervous system. Their use is most frequently linked to sudden onset and severe burning sensations and tearing in the eyes, pain on exposed skin, vomiting, coughing and restricted breathing (Haar et al, 2017b).

In the eyes, severe redness, intense pain and tearing will occur, resulting in blepharospasm (eyelid spasm characterized by frequently blinking) and sometimes, temporary blindness. Within seconds, exposed skin will feel a painful burning sensation. Depending on the dose, redness may appear on the skin and in cases of allergy or hypersensitivity blistering lesions such as those seen below in Figure 1.6 may occur (even one week after exposure).

As the chemical is breathed in, it will irritate the oropharyngeal and lung linings, causing pain, coughing and sensations of respiratory distress. Many people also experience anxiety and panic reactions. The most dangerous effects include laryngeal inflammation obstructing the upper airway, inflammation in the tracheobronchial tree inducing tracheobronchitis or bronchospasm of varying intensity that hinders normal breathing. There are circumstances that may increase the risk of complications, such as the use of these substances in enclosed spaces that make ventilation difficult.

Certain groups that are particularly susceptible to the effects of chemical irritants, including older people, children, people who are pregnant or people with respiratory problems such as asthma or chronic obstructive pulmonary disease. Airway obstruction or inflammation in vulnerable people could lead to cardiorespiratory arrest and death. According to the American Academy of Paediatrics, “children are uniquely vulnerable to physiological effects of chemical agents. A child’s smaller size, more frequent number of breaths per minute and limited cardiovascular stress response compared to adults magnifies the harm of agents such as tear gas.” (Kraft, 2018).

The half-life of most chemical irritants is short and the symptoms are transient, lasting less than an hour after exposure for most people, although for some people the effects can be more severe, long lasting and cause ongoing health impacts (Centers for Disease Control and Prevention, 2018). The dose-exposure will increase when chemical irritants are used in enclosed spaces (where the irritant cannot disperse) or in cases of prolonged and/or repeated exposure (when people cannot escape the effects), resulting in exacerbated harm (see, United Nations Committee against Torture, 2017, paras. 24-25). In

some cases, higher doses have been known to cause gastrointestinal distress, corneal burns, pulmonary edema and fatal acute lung injury. In addition, repeated exposure to some CS gases can result in hypersensitivity reactions, with allergic responses worsening with each exposure.

Despite being widely available and used for nearly a century, there are few studies establishing the safety of chemical irritants, and none on newer compositions. Of the reports and studies on chemical irritants that have been conducted, almost all note the need for more research.

The use of chemical irritants during the COVID-19 pandemic highlighted the risk of law enforcement contributing to the spread and impact of respiratory viruses, due to their effect on breathing and the lungs, and the risk of infection through induced coughing or sneezing (Omega Research Foundation, 2020). In 2020 the American Thoracic Society called for a moratorium on the use of tear gas and other chemical agents deployed by law enforcement against protestors participating in demonstrations, citing “the lack of crucial research, the escalation of tear gas use by law enforcement, and the likelihood of compromising lung health and promoting the spread of COVID-19” (American Thoracic Society, 2020).

An area of increasing importance, but where no clinical studies have yet been published, is the growing awareness of the effects of chemical irritants on different human bodies and reproductive health. Reports have suggested that there may be a relationship between use of tear gas and miscarriage (Physicians for Human Rights, 2012). Following the widespread use of large quantities of chemical irritants during Black Lives Matter and other protests in the US in summer 2020, media reports emerged of physiological effects for people who menstruate (see, for example, Slisco, 2020; Stunson, 2020; Nowell, 2020). Stress may also play a role. One peer-reviewed study based on a web-based survey of 2257 adults reporting recent exposure to tear gas in Portland, Oregon (U.S.), found that 54.5% of 1650 respondents who potentially menstruate reported menstrual changes. The most reported issues were increased menstrual cramping, unusual spotting, increased bleeding, and more days of bleeding (Torggrimson-Ojerio et al, 2021).

Care for those affected by chemical irritants should include decontamination, to prevent the penetration of more toxic substances into the body once exposure has ended, in order to avoid further damage. To do this, objects that have been impregnated by the toxin and are in contact with the skin or mucous membranes should be removed, such as contaminated clothing and contact lenses. In addition, the skin and eyes should be thoroughly irrigated with fresh water or saline solution for at least 20 minutes. Health professionals should warn the patient that

initially the stinging sensation and pain in the skin or mucous membranes may worsen. While there are anecdotal reports of a variety of substances helping with symptoms, there is little evidence to support their use. In the case of eye pain, anaesthetic eye drops may be prescribed. For individuals with respiratory symptoms, inhalers with bronchodilator and/or corticoids can be used for bronchospasm, and oxygen administration may also be necessary. In some cases, hospitalization and even ICU level care may be necessary to treat exposed patients.

In addition to the above, chemical irritant projectiles and grenades can cause significant trauma, when they strike a person directly or when they explode in close proximity to a person (Abdullah Yasa and Others v. Turkey, 2013; Omega Research Foundation and OSCE Office of Democratic Institutions and Human Rights, 2021). The risks associated with explosive grenades include burns, shrapnel wounds and explosive trauma. Therefore, eye damage lasting more than an hour should lead health professionals to suspect that a foreign body impact injury to the cornea. In such cases, a complete eye examination is essential, including fluorescein staining to identify corneal abrasions or other ocular lesions. Because launched cartridges are large and dense, when the cartridge itself strikes an individual, it can cause trauma ranging from bruising to facial and limb fractures to internal bleeding to brain injury and death.

#### *Kinetic Impact Projectiles*

##### *Global context*

Kinetic impact projectiles, commonly referred to as rubber or plastic bullets, are used in the context of public assemblies by law enforcement agencies in many states. Worrying trends in-

clude the use of large quantities of projectiles, frequently affecting peaceful protesters or bystanders, and the increasing prevalence of ocular injuries (Omega Research Foundation and Amnesty International, 2023).

French police used large quantities of less lethal weapons in response to *Gilets Jaunes* protests. The Council of Europe Commissioner for Human Rights reported that from 17 November 2018, when the protests began, to 4 February 2019, police fired 12,122 40 mm kinetic impact projectiles (Mijatović, 2019b, para. 16). The protest movement fully mobilised on a weekly basis, on Saturdays. There were 12 Saturdays in the date range mentioned above, so it is reasonable to conclude that close to 1,000 projectiles a day were launched during the most intense *Gilets Jaunes* protests. In Chile during the *Estallido Social*, the *Carabineros de Chile* revealed that they fired 151,288 shotgun cartridges containing 12 pellets each between 18 October and 31 December 2019. In the first two weeks of protests, Carabiniero launched 104,341 rounds, a rate of 7,453 per day (Weibel Barahona and Jara, 2020).

Historically, the use of large quantities of kinetic impact projectiles is most commonly associated with The Troubles in Northern Ireland. The use of “Plastic Baton Rounds” against protesters by the Royal Ulster Constabulary and the British Army was “the most controversial aspect of public order policing” during The Troubles in Northern Ireland (The Independent Commission on Policing in Northern Ireland, 1999, para. 9.12). According to the Patten Report, between 1981 and 1999 over 56,000 plastic baton rounds were fired by the police and the army, resulting in 11 deaths Ireland (The Independent Commission on Policing in Northern Ireland, 1999, para. 9.12), of the 17 overall caused by rubber or plastic im-

**Figure 1.7.** Number of kinetic impact projectiles used during mass protests in Northern Ireland, France and Chile.

	<b>Number of rounds launched over entire period</b>	<b>Total number of rounds launched during most intense periods</b>	<b>Average number of rounds launched per day during most intense periods</b>
The Troubles, Northern Ireland	56,000 over 18 years	8,165 (7 – 14 July 1996)	1,021
Gilets Jaunes protest movement, France	12,122 over 80 days	12,122 (Every Saturday for 12 weeks, 17 November 2018 – 4 February 2019)	1,010
Estallido Social, Chile	151,288 over 75 days	104,341 (18 – 31 October 2021)	7,453



compact projectiles. According to available data, 7 – 14 July was the period when most plastic baton rounds were fired, 8,165 in total (British Irish Rights Watch, 2005, p. 7). Thus, security forces used around 1,000 plastic baton rounds per day during the most intense protests of the Troubles.

Although France and Chile are both much larger countries than Northern Ireland, it is still striking that use of kinetic impact projectiles in these countries equalled or far exceeded use during even the most difficult times during the Troubles.<sup>v</sup>

During the 2019-2020 protests in Chile, police used 12-gauge shotgun cartridges containing 12 small balls or pellets each. The National Human Rights Institute reported that 460 protesters suffered ocular injuries (Instituto Nacional de Derechos Humanos, 2020). A medical study into cases of ocular trauma treated at the Eye Trauma Unit in Hospital del Salvador, Santiago, found that 182 (70.5%) of 259 patients had been injured by rounds containing multiple kinetic projectiles (Rodríguez et al, 2021). Of the 182 patients whose injuries were caused by kinetic impact projectiles, 33 had total blindness in the affected eye and 90 had severe visual impairment or were blind at first examination (Rodríguez et al, 2021, p. 3).

An independent study revealed that the projectiles contained just 20% rubber, with the other 80% made up of silica, barium sulphate, and lead (Jorquera and Palma, 2019). This composition reportedly provided added hardness and energy, “which significantly increases the damage caused by the projectiles” (Mechanical Engineering Department of the Faculty of Physical and Mathematical Sciences of the University of Chile, 2019). Thus, the type of ammunition being used, the manner in which they were being used (aimed at the upper body) and the composition of the projectiles all contributed to large numbers of serious injuries.

During the *Gilets Jaunes* protests, use by French police of 40 mm projectiles launched with the *Lanceur de balles de défense (LBD)*, was the cause of widespread public anger. Unlike the shotgun ammunition used in Chile, the 40 mm ammunition used in France, manufactured by the French company SAE Alsetex (part of the Etienne Lacroix Group), contains single projectiles. These 40 mm kinetic impact projectiles are designed to impact head on, with the foam nose absorbing the energy upon impact and thereby reducing injuries, but the prevalence of serious injuries presented indicates that they do not always do that.

The types of ammunition in use are designed to be launched from different ranges, with the longer-range ammunition containing more propellant. The French Ombudsperson (Défenseur des droits) has called for the use of this weapon system to be prohibited during public gatherings, in part due to the diffi-

culty of determining the range and assessing the risk of hitting bystanders, as people are usually grouped and mobile in such a context (Toubon, 2019). As with other kinetic impact projectiles, there is an increased risk of serious injury or death when rounds are used from close range or impact sensitive parts of the body (e.g. head or upper body). In January 2019, the Ombudsperson reported that use of the LBD was the cause of or implicated in 18 of the 45 complaints he had received of “extremely serious injury” or “permanent mutilation”.

Even when kinetic impact projectiles are aimed below the waist, their use can lead to serious injury or death. For instance, in the Brazilian state of Pernambuco in 2017, a Military Police officer shot Edvaldo da Silva Alves in the thigh with a kinetic impact projectile during a peaceful protest. The projectile was fired from a distance of less than 5m, resulting in penetration. Although the projectile was surgically removed from the victim’s body, he later died of a general infection caused by his injuries (Folha de Pernambuco, 2017; Further information on file at Omega).

#### *Characteristics and techniques*

Kinetic impact projectiles are often made of hardened rubber, but they can also be made from other materials including wood, metal composite or plastic/PVC. ‘Less lethal’ ammunition can contain single or multiple projectiles including, for example, pellets, balls, blocks, cylinders, or fabric bags filled with pellets (“bean bags”).

Due to their indiscriminate effects and the danger they present, the Council of Europe Commissioner for Human Rights has expressed concern at the unsuitability of certain less lethal weapons that are increasingly used for the policing of protests. In this context, she stated that the number of serious injuries caused by the use of kinetic impact projectiles was “particularly striking” (Mijatović, 2019a).

There is some divergence between international human rights standards on the lawful threshold for using kinetic impact projectiles. The UN Guidance states that they should only be used to strike a violent individual posing “an imminent threat of injury” (United Nations Office of the High Commissioner for Human Rights, 2020b, para. 7.5.2). Both the OSCE-ODIHR *Human Rights Handbook on Policing Assemblies* and the UN Resource Book impose a stricter standard, however, stating kinetic impact projectiles should only be used against individuals posing an immediate threat of *serious* injury or death (OSCE Office of Democratic Institutions and Human Rights, 2016 p. 81; United Nations Office on Drugs and Crime and Office of the High Commissioner for Human Rights, 2017, pp. 94-95).

**Figure 1.8.** Examples of multiple projectiles (left) and single projectiles (right). Source: ©Omega Research Foundation. June 2018. Paris, France.



These international human rights instruments also share important commonalities. All state that kinetic impact projectiles should only be used to target individuals posing a threat, not groups, and that the use of ammunition containing multiple projectiles, such as those shown below in Figure 1.8, does not comply with international human rights standards due to their inherent lack of accuracy. Both the UN Guidance and the ODIHR Handbook stipulate that kinetic impact projectiles should only be aimed at the lower abdomen or legs (United Nations Office of the High Commissioner for Human Rights, 2020b, para. 7.5.2; Organisation for Security and Cooperation in Europe, 2016, p. 81), and this is complemented by the Resource Book which states that they should not be fired at sensitive parts of the body, “in particular the head, neck, chest and groin” (United Nations Office on Drugs and Crime and Office of the High Commissioner for Human Rights, 2017, p. 95).

Advocates should insist that kinetic impact projectiles are sufficiently accurate to strike an individual within a 10 centimetre diameter of the targeted point from the designated range (United Nations Office of the High Commissioner for Human Rights, 2020b, para. 7.5.4). They should also insist on thor-

ough initial and refresher training, with officers having to reach minimum proficiency standards in order to be certified to carry kinetic impact projectiles.

In some countries such as India (United Nations Office of the High Commissioner for Human Rights, 2019), shotgun cartridges containing multiple metal projectiles, often called birdshot or pellet rounds, are used as crowd control weapons. Their use has been associated with deaths and thousands of blindings and other serious injuries (Omega Research Foundation and Amnesty International, 2023, pp. 21 – 23). Such metal pellet ammunition is designed for hunting and its use for policing is entirely inappropriate and unlawful, with the UN guidance stating that “metal pellets, such as those fired from shotguns, should never be used” (United Nations Office of the High Commissioner for Human Rights, 2020b, para. 7.5.6). Similarly, rubber-coated metal bullets, such as those used in Israel (United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory, 2019, para. 294), are particularly dangerous and should not be used (United Nations Office of the High Commissioner for Human Rights, 2020b, para. 7.5.8).

**Figure 1.9.** Injury caused to person deprived of their liberty by impact of kinetic impact projectile. Source: ©Brazilian National Mechanism to Combat and Prevent Torture, 2017.



#### *Health concerns*

Kinetic impact projectiles, designed to cause pain, cause damage in the same way as striking weapons, by blunt trauma that injures the affected areas. The main symptom is again intense pain. Though designed to cause blunt, non-penetrative trauma, they can perforate the skin, particularly when fired from close range or at sensitive areas of the body, particularly the head, face and eyes (Haar et al, 2017a).

Some characteristics of KIPs can potentiate injury. The use of dense material, such as metal, can exacerbate the risk of penetration and injury. Projectiles incorporating metal, such as rubber-coated metal bullets (used by Israeli forces in the Occupied Palestinian Territories), projectiles with metal fragments (used in several contexts including in Chile) and bean bag rounds (used in the USA and elsewhere) are well known to cause significant injuries, especially when fired at close range. Ammunition dispersing multiple projectiles at once, two to many dozens, cannot be aimed at a single target, and can hit multiple people or sites of the body, causing variable and indiscriminate injury.

KIPs can and have caused serious injuries, disability and death. In a 2017 systematic review of 26 studies over 25 years, data on nearly 2000 persons impacted by KIPs identified 300 people with permanent disabilities and 53 who died from their injuries [Haar et al, 2017a]. Injuries were found in all body systems.

On the skin, in addition to pain, redness localised to the area of impact may appear, and could be accompanied by bruising, laceration, wounds, etc. As described above, if the deep-

er muscles are damaged, local inflammation may appear, with difficulty in mobilising the affected muscle, and there may be deformity and functional disability if bone fractures or joint injuries have occurred.

Some projectiles have been found to be inaccurate and inconsistent (Kenny et al, 2001 and Hughes et al, 2007). Particularly when fired from a distance, it is often difficult to control the area of impact, so that particularly vulnerable areas such as the face are often hit, with maxillofacial fractures and eye injuries of varying degrees of severity. Given their large size and the fragile bony structure and supple eye tissues, ocular injuries frequently result in permanent vision loss. 261 of the 300 permanent injuries in the systematic review mentioned above were ocular injuries, almost all with permanent vision loss in that eye [Haar et al, 2017a].

KIP trauma to the head have caused blunt trauma resulting in internal bleeding and in a number of cases, have penetrated the skull. Impact to the head can result in traumatic brain injury, haemorrhagic strokes and permanent disability.

Health professionals must treat facial and neck trauma with special caution and almost all require urgent medical attention to assess the airway and prevent it from being compromised (e.g. fractures of teeth, haematomas affecting the major vessels of the neck that can obstruct the airway by compression, etc.). The treatment of superficial injuries is based on applying cold compress, local wound dressings, immobilisation in certain injuries and analgesia.

#### *Stun Grenades*

##### *Global context*

Originally designed as a training aid to simulate explosions, stun grenades were initially adopted for use by military special forces units, and later, by law enforcement special weapons and tactics (SWAT) teams, during room clearance or hostage situations. In some countries, stun grenades have become more widely used by law enforcement personnel for crowd-control purposes. When used in the context of a public gathering, the aim is to disorient those present and cause them to disperse. Use in this context carries with it an increased risk of secondary injuries from falls, as the detonation of stun grenades risks causing panic or stampedes among large groups of people. States may need to re-assess their use of stun grenades during public gatherings in light of the UN Human Rights Committee General Comment on the right of peaceful assembly, which states “when [less lethal] weapons are used, all reasonable efforts should be made to limit risks, such as causing a stampede or harming bystanders” (United Nations Human Rights Committee, 2020, para. 87).

Stun grenades were used in the law enforcement response to large protests that erupted against the contested results of the Belarusian presidential election in August 2020, leading to many serious injuries (Boika et al, 2020). The Belarusian security forces used several types of stun grenade, including the Russian-manufactured SV-1319 Viyushka (AbraxasSpa, 2020), which, upon detonation, emits a loud bang, a bright flash of light, and 750 rubber pellets with a diameter of 7.5mm. According to company information, these grenades produce a sound not less than 130 decibels measured at a distance of 10 metres from the explosion (Rosoboronexport, 2023).

In Belarus, stun grenades were reportedly used directly against crowds of people, exploding at thigh height or lower (Boika et al, 2020). Serious injuries reportedly included broken bones in the finger, foot, and calf. In one instance, a man's foot was reportedly ripped off when a stun grenade exploded near him (Boika et al, 2020). Many protesters were injured by fragments of exploded stun grenades (Karmanau, 2020), including serious injuries such as pneumothorax (Boika et al, 2020), and some people also suffered eardrum damage (Mardilovic, 2020).

Stun grenades were previously also used against large crowds of peaceful protesters in Yerevan, Armenia, on 29 July 2016. Police reportedly both launched and threw stun grenades into groups of peaceful protesters, with grenades exploding and emitting thick smoke and loud blasts, resulting in first- and second-degree burns, fragmentation wounds, and one protester reportedly lost an eye after being hit by fragments (Human Rights Watch, 2016).

#### *Characteristics and techniques*

Stun grenades, also known as “flashbangs” and “distraction” or “disorientation” devices, are explosive devices that can be either hand-thrown or weapon-launched. Upon detonation, they emit an extremely loud noise and/or bright flash(es) of light. The flash causes temporary blindness for several seconds by activating photoreceptor cells in the eye, and the loud blast can cause temporary loss of hearing and loss of balance, as well as a sense of panic (International Network of Civil Liberties Organizations et al, 2023, p. 88). Some stun grenades have ridges to limit their movement after detonation, while other types move around and have multiple explosions, causing loud blasts and bright flashes. The casing on some stun grenades has several circular cut-outs, such as those shown in Figure 1.10, to allow the sound and light from the explosion through. Some types also disperse chemical irritants and/or kinetic impact projectiles. The intensity of the noise and flash emitted varies from manufacturer to manufacturer. Some manufacturers market grenades with rubber casing as suitable for indoor use (see, for example, Condor Tecnologias

**Figure 1.10.** Hand-thrown stun grenades. Source: ©Omega Research Foundation. November, 2017. Paris, France



Nao Letais, 2023). Others claim that their grenades emit less heat upon detonation, lowering the fire risk, or are designed not to move upon detonation (see Pacem Defense, 2023).

#### *Health concerns*

Stun grenades contain an oxidising metallic pyrotechnic mixture, usually of magnesium or aluminium. Upon detonation, they emit extremely loud noise and/or bright flash(es) of light. The flash of light can saturate the retina, causing temporary blindness. During the following minutes, vision will gradually recover, with flashes of light persisting until it returns to normal. Acoustic waves can cause persistent hearing damage through ruptured eardrum and acoustic trauma with hearing loss that may persist.

Like all explosive devices, stun grenades carry the risk of blast injury. Blast injury results from the pressure waves caused by the blast on ambient air. As the proximity of a person or group of people to the explosion increases, so too does the risk of serious injury or death. The primary blast can cause injuries to the ear drum and lung membranes, especially when they discharge in close proximity to an individual.

**Figure 1.11.** “A stun grenade exploded on Philippi High School pupil Bunzi Akhona, ripping through her tracksuit pants and searing skin off the back of her left leg.” Source: Daneel Knoetze, Cape Town, 6 March 2015. CC by 4.0.



Secondary blast can cause blunt and penetrating injury from the explosion and fragmentation of the device itself. Some stun grenades can produce high velocity fragments when they explode, which can have sufficient energy to cause serious injury or death. Safer grenades split, rather than fragment. Some stun grenades contain multiple kinetic impact projectiles which forcefully disperse across the blast area upon detonation.

The height at which stun grenades may explode at is a factor in the injuries they may cause, due to the proximity of the explosion to vital organs and other vulnerable parts of the body. The risk is lowered when grenades are rolled along the ground, rather than thrown or launched. This was tragically evident in the death of Remi Fraisse, who was killed during a protest against the construction of a dam in France in October 2014. A stun grenade thrown by the French Gendarmerie reportedly exploded near his back, severing his spinal cord and killing him instantly (Désarmons-les !, 2018).

Tertiary blast can cause blunt and penetrating trauma such as fractures and head trauma from pushing people into solid objects, or entraining projectiles in the blast wave. Quaternary blast can result in burns, smoke inhalation, crush injuries from a resulting stampede or psychiatric trauma (International Network of Civil Liberties Organizations et al, 2023). Stun grenades burn extremely hot, and the risk of fire, smoke inhalation and serious burns is higher in enclosed spaces. A 2015 Propublica investigation reports in more than 50 cases of death and serious injury from law enforcement use of stun grenades (many of them when they were launched into residential spaces). (Propublica, 2015).

As blast injuries have variable effects, early medical attention should be sought for any injuries to the head/face or other sensitive body parts such as the genitalia or hands. Prolonged headaches, hearing or vision loss would require in-depth evaluation for concussion, tympanic membrane rupture or globe rupture as a result of blast pressure or foreign bodies.

Burns, blisters and skin injuries, such as those seen in Figure 1.11, should be treated as explosive injuries, irrigated and dressed. The main symptom of burns will be pain and, depending on the severity, the skin may show erythema or local redness as in sunburn (first degree burns), or blistering or even tissue necrosis with permanent scarring in third degree burns, depending on the layers of skin affected. These burns can be complicated by toxic gas inhalation injuries, making the prognosis much worse. In these cases, urgent medical assessment is necessary as facial burns or burns accompanied by inhalation can endanger the airway and the ventilatory capacity of the patients. This requires early oxygen therapy and assessment of the need for intubation or intensive care. Second- and third-degree burns will require treatment with balanced fluid administration depending on their extent, and local treatment of the lesions to avoid superinfection.

#### *Other less lethal weapons*

There are a wide range of other less lethal weapons and devices in use, although perhaps not as commonly observed as those covered above, all would merit thorough examination, but a lack of space prevents it here. Water cannon are becoming more prevalent globally, due in part to lower cost arising from manufacture in China and South Korea (see, for example, Jino Motors, 2023), but also from more modern designs (see, for example, Albert Ziegler GmbH, 2023). There are reports that water cannons are being further weaponized by adding dye, chemical agents or foul-smelling contaminants to exert secondary impacts. Injury intensity is influenced by the pressure, distance, duration and composition of the water stream. Direct injury from the water jets is rare, but include loss of the eyes and facial fractures (Grimley, 2014). Secondary effects include being knocked over, pushed off high ground, or objects being entrained in the water stream impacting the body.

Acoustic and optical devices are increasingly encountered. Acoustic devices were introduced for warning or as loud hailers, however some have ‘warning tones’ at high frequency or sound pressure levels, which can lead to hearing loss (Amnesty International USA, 2014, p. 14). Optical devices that interfere with an individuals’ vision are designed to warn or to dazzle (see, for example, B.E. Meyers & Co. Inc., range of GLARE products). They have the potential to cause irreversible sight

loss. Dogs and horses are also commonly deployed in crowd control settings where dog bites, trampling by horses and other traumas can occur when confronted by these animals (Omega Research Foundation and OSCE Office of Democratic Institutions and Human Rights, 2021).

An emerging issue in crowd control weaponry is the use of remote drone technology, either for surveillance of crowds or for deployment of lethal and less lethal weapons. Surveillance using drone or other remote technology is growing in recent years, with the potential to identify and later arrest or persecute demonstrators. The use of chemical irritant projectiles or grenades via drone has been increasingly reported and a number of manufacturers offer such systems (ISPRA, 2023), underscoring the need for consistent monitoring of such technological developments.

### Conclusion

The vast majority of public assemblies transpire peacefully and many do not even require the presence of law enforcement officials. Where police or other law enforcement officials are present, their primary duty is to facilitate, respect and protect the exercise of fundamental rights, enabling the assembly to take place as intended and minimising the potential for injury to any person or damage to property (United Nations Human Rights Committee, 2020, paras. 74-76). Nonetheless, in many countries policing of assemblies is politicised, and there is also a tendency to label entire assemblies as violent and use less lethal weapons to disperse them. This does not solely affect those who are hurt or even those who are present at the assembly, as it can have a wider chilling effect on the enjoyment of the right to freedom of peaceful assembly and civic engagement.

In cases of assemblies which may be non-peaceful, and where force against those who are violent may be justified, there is often no attempt to distinguish between individuals engaged in unlawful conduct and others exercising their right to peaceful assembly. Sporadic instances of violence by individuals in an assembly does not mean the whole assembly can be classed as violent, and non-violent individuals still retain their rights which must be protected. The obligation to prioritise non-violent means of conflict resolution is frequently ignored in such circumstances, with the violence of a few used to justify the vilification of the many and the discrediting of the message they seek to convey.

There are various factors that contribute to law enforcement officials continuing to use excessive and arbitrary force to police assemblies, but one crucial issue is impunity. Impunity is, in turn, facilitated by a series of interrelated causes. These include unprofessional and permissive police cultures, weak use

of force protocols, inadequate training, an absence of effective, independent oversight mechanisms, allegations of police abuse being investigated by the same agency, overly close relationships between police and prosecutors, and a lack of knowledge among judges and other legal professionals concerning international use of force standards and the technical characteristics of the weapons used by law enforcement agencies.

Reliable forensic evidence and effective oversight are of fundamental importance to addressing impunity and achieving accountability for the excessive or arbitrary use of force. As such, we encourage medical and legal professionals to ensure they have up-to-date knowledge of the characteristics of less lethal weapons used in the jurisdictions where they practice, the techniques used for their employment, and the risks associated with their use. If health professionals are called on for forensic evaluation or testifying in civil or criminal litigation, it is important to provide information on the weapons, the methods of use, resulting injuries, as well as the functional and long-term sequelae. Professional bodies should offer training and support on these matters, complementing other training on the implementation of the Istanbul and Minnesota Protocols.

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### References

- AbraxasSpa (2020) [Twitter] 12 August. <https://twitter.com/AbraxasSpa/status/1293485090283159552>, accessed 20 December 2023.
- Abdullah Yasa and Others v. Turkey (2013) ECHR 686.
- Albert Ziegler GmbH (2023) PSV 9000. <https://www.ziegler.de/de/produkte/sonderfahrzeuge/Spezielle%20Fahrzeuge/psv>, accessed 20 December 2023.
- American Thoracic Society (2020) Tear gas use during COVID-19 pandemic irresponsible; Moratorium needed, says American Thoracic Society. <https://www.thoracic.org/about/newsroom/press-releases/journal/2020/tear-gas-use-during-covid-19-pandemic-irresponsible-moratorium-needed,-says-american-thoracic-society.php>, accessed 20 December 2023.
- Amnesty International (2019) Iraq: Iranian tear gas grenades among those causing gruesome protester deaths. <https://www.amnesty.org/en/latest/news/2019/10/iraq-gruesome-string-of-fatalities-as-new-tear-gas-grenades-pierce-protesters-skulls/>, accessed 20 December 2023.
- Amnesty International (2020a) *Tear gas: an investigation*. <https://>

- teargas.amnesty.org/, accessed 20 December 2023 .
- Amnesty International (2020b) Tunisia: Authorities must investigate excessive use of force in Tataouine. <https://www.amnesty.org/download/Documents/MDE3027472020ENGLISH.pdf>, accessed 20 December 2023.
- Amnesty International (2021) *Blunt force: Investigating the misuse of police batons and related equipment* <https://www.amnesty.org/en/latest/research/2021/09/blunt-force/>, accessed 20 December 2023.
- Amnesty International USA (2014) *On the streets of America: Human rights abuses in Ferguson*. <https://www.amnestyusa.org/reports/on-the-streets-of-america-human-rights-abuses-in-ferguson/>, accessed 20 December 2023.
- Barrett, B (2020) The Pentagon's hand-me-downs helped militarize police. Here's how. *Wired*. <https://www.wired.com/story/pentagon-hand-me-downs-militarize-police-1033-program/>, accessed 20 December 2023.
- B.E. Meyers & Co. Inc. (2023). <https://bemeyers.com/>, accessed 20 December 2023.
- Boika, A., Litavrin, M., Skovoroda, Y. et al (2020) "Brutalised Minsk: How Belarusian police beat protesters", *Mediazona*, 3 November 2020, <https://mediazona.by/article/2020/11/03/minsk-beaten-en>, accessed 20 December 2023.
- British Irish Rights Watch (2005) Plastic bullets: a human rights perspective. [https://www.rightsandsecurity.org/assets/cv\\_uploads/2005\\_-\\_Report\\_on\\_Plastic\\_Bullets.pdf](https://www.rightsandsecurity.org/assets/cv_uploads/2005_-_Report_on_Plastic_Bullets.pdf), accessed 14 July 2023.
- Centro de Estudios Legales y Sociales (2018) *The internal war: How the fight against drugs is militarizing Latin America*. <https://www.cels.org.ar/web/en/publicaciones/la-guerra-interna-como-la-lucha-contra-las-drogas-esta-militarizando-america-latina/>, accessed 20 December 2023.
- Centers for Disease Control and Prevention (2018) Facts about riot control agents interim document. <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>, accessed 20 December 2023.
- Chulov, M. (2022) Mother says police beat daughter to death in Iranian protests. *The Guardian*. <https://www.theguardian.com/world/2022/oct/08/mother-says-police-beat-daughter-to-death-in-iranian-protests>, accessed 14 December 2023.
- Condor Tecnologias Nao Letais (2023) GB-707 granada luz e som – indoor. <https://www.condornaoletal.com.br/gb-707/>, accessed 20 December 2023.
- Désarmons-les ! (2018) Rémi Fraisse, tué par les gendarmes à Sivens le 26 octobre 2014. <https://desarmons.net/index.php/2018/01/09/retour-sur-la-mort-de-remi-fraisse-le-26-octobre-2014/>, accessed 20 December 2023.
- Dymond, A, Corney, N, and Casey-Maslen, S. (2014) Weapons testing and review. In Casey-Maslen S. (Ed), *Weapons under international human rights law*. Cambridge: Cambridge University Press.
- Edwards, A. (2023) Thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment. UN doc. A/78/324.
- European Centre for Press and Media Freedom (2018) Journalists detained and assaulted at inauguration protests. *Mapping Media Freedom*. <https://www.mapmf.org/alert/22234>, accessed 20 December 2023.
- Folha de Pernambuco (2017) Polícia conclui que Caso Itambé foi homicídio. <https://www.folhape.com.br/noticias/policia-conclui-que-caso-itambe-foi-homicidio/29761/> accessed 20 December 2023.
- Gershkovich, E. (2020) Those guys with whips? They're cossacks meant to keep you safe at Russia's World Cup. *Moscow Times*. <https://www.themoscowtimes.com/2018/05/28/those-guys-with-whips-theyre-cossacks-meant-to-keep-you-safe-at-russias-world-cup-a61599>, accessed 20 December 2023.
- Grimley, N. (2014) Blinded German man urges Boris Johnson not to bring water cannon to London. *BBC News*. <https://www.bbc.co.uk/news/uk-26226926>, accessed 20 December 2023.
- Haar, R. J., Iacopino, V., Ranadive, N., Dandu, M., & Weiser, S. D. (2017a). Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review. *BMJ open*, 7(12), e018154. doi: 10.1136/bmjopen-2017-018154
- Haar, R. J., Iacopino, V., Ranadive, N., Weiser, S. D., & Dandu, M. (2017b). Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray. *BMC public health*, 17(1), 1-14. doi: 10.1186/s12889-017-4814-6.
- Hoz, S.S., Aljuboori, Z.S., Dolachee, A.A. et al (2020) Fatal penetrating head injuries caused by projectile tear gas canisters. *World Neurosurgery*, 138, e119-e123. Doi: 10.1016/j.wneu.2020.02.050
- Hughes, E., Kenny, J., Heal, S. and Kaufman, P. (2007) An attribute based evaluation II (ABE-2) of less-lethal impact munitions. Applied Research Laboratory, Penn State University.
- Human Rights Watch (2016) Armenia: Excessive police force at protest. <https://www.hrw.org/news/2016/08/01/armenia-excessive-police-force-protest>, accessed 20 December 2023.
- Human Rights Watch (2020a) "Kettling" protesters in the Bronx. *systemic police brutality and its costs in the United States*. <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>, accessed 20 December 2023.
- Instituto Nacional de Derechos Humanos (2020) *Reporte general de datos sobre violaciones a los derechos humanos: Datos desde 17 de octubre de 2019 e ingresados hasta el 13 de marzo de 2020*. <https://www.indh.cl/bb/wp-content/uploads/2020/04/Reporte-INDH-19-de-marzo-de-2020.pdf>, accessed 20 December 2023.
- International Network of Civil Liberties Organizations (INCLO), Physicians for Human Rights (PHR) and Omega Research Foundation (2023) *Lethal in disguise 2: How crowd-control weapons impact health and human rights*. <https://phr.org/our-work/resources/lethal-in-disguise-2/>, accessed 17 July 2023.
- ISPR (2023) Riot control drone system <https://www.isprald.com/Riot-Control-Drone-System.html>, accessed 20 December 2023.
- Izci v Turkey (2013) ECHR 719.
- Jino Motors (2023). <http://www.jinomotors.com/sub/product/list.php?idx=1>, accessed 20 December 2023.
- Jorquera E., P. and Palma H., R. (2019) Estudio de perdigón. *Faculty of Physical and Mathematical Sciences of the University of Chile*. <https://uchile.cl/dam/jcr:a2b24427-d54a-48b2->

- b886-d5e27309aec3/estudio-de-perdigones.pdf, accessed 20 December 2023.
- Karmanau, Y. (2020) Police break up protests after Belarus presidential vote. *AP*. <https://apnews.com/article/alexander-lukashenko-belarus-international-news-elections-riots-d310c4f9811b31e44fa5536bb826cc5e>, accessed 20 December 2023.
- Kenny, J., Heal, S. and Grossman, M. (2001) The attribute-based evaluation (ABE) of less-than-lethal, extended-range, impact munitions. Applied Research Laboratory: Penn State University.
- Kiai, M. (2012) *Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*. UN Doc. A/HRC/20/27.
- Kraft, C. A. (2018) AAP Statement in response to tear gas being used against children at the U.S. southern border. *American Academy of Paediatrics*. <https://www.aap.org/en/news-room/news-releases/aap/2018/aap-statement-in-response-to-tear-gas-being-used-against-children-at-the-us-southern-border/>, accessed 14 December 2023.
- Mardilovic, A. (2020) Комбинированная травма. Минчанка, получившая осколочное ранение от светошумовой гранаты, стала подозреваемой по уголовному делу. *Mediazona*. <https://mediazona.by/article/2020/09/08/kombinirovannaya-travma>, accessed 20 December 2023.
- Mechanical Engineering Department of the Faculty of Physical and Mathematical Sciences of the University of Chile (2019) Investigación U. de Chile comprueba que perdigones usados por Carabineros contienen solo 20 por ciento de goma. <https://www.uchile.cl/noticias/159315/perdigones-usados-por-carabineros-contienen-solo-20-por-ciento-de-goma>, accessed 20 December 2023.
- Mijatović, D. (2019a) Human rights comment: Shrinking space for freedom of peaceful assembly. *Council of Europe*. <https://www.coe.int/en/web/commissioner/-/shrinking-space-for-freedom-of-peaceful-assembly?inheritRedirect=true>, accessed 20 December 2023.
- Mijatović, D. (2019b) Memorandum on maintaining public order and freedom of assembly in the context of the “yellow vest” movement in France. *Council of Europe*. <https://www.coe.int/en/web/commissioner/-/maintaining-public-order-and-freedom-of-assembly-in-the-context-of-the-yellow-vest-movement-recommendations-by-the-council-of-europe-commissioner-for->, accessed 20 December 2023.
- Nowell, C. (2020) Protesters say tear gas caused them to get their period multiple times in a month. *Teen Vogue*. <https://www.teenvogue.com/story/protestors-say-tear-gas-caused-early-menstruation>, accessed 20 December 2023.
- Olewe, D. (2020) Coronavirus in Africa: Whipping, shooting and snooping. *BBC*. <https://www.bbc.co.uk/news/world-africa-52214740>, accessed 20 December 2023.
- Omega Research Foundation (2020) Lowering the risk - Curtailing the use of chemical irritants during the COVID-19 pandemic. <https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Position%20Paper%20with%20logo.pdf>, accessed 20 December 2023.
- Omega Research Foundation (2023) *International controls on the trade in the tools of torture*. <https://storymaps.arcgis.com/stories/2d9b2865e511428aa6b74cce84e984c5>, accessed 14 December 2023.
- Omega Research Foundation and Amnesty International (2020) *Ending the torture trade: The path to global controls on the ‘tools of torture’*. <https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Ending%20the%20Torture%20Trade%20-%20The%20Path%20to%20Global%20Controls%20on%20the%20%27Tools%20of%20Torture%27.pdf>, accessed 20 December 2023.
- Omega Research Foundation and Amnesty International (2023) *‘My eye exploded’: The global abuse of kinetic impact projectiles*. <https://www.amnesty.org/en/documents/act30/6384/2023/en/>, accessed 17 July 2023.
- Omega Research Foundation and OSCE Office of Democratic Institutions and Human Rights (2021) *Guide on law enforcement equipment most commonly used in the policing of assemblies*. <https://www.osce.org/odihr/491551>, accessed 20 December 2023.
- OSCE Office of Democratic Institutions and Human Rights (2016) *Human rights handbook on policing assemblies*.
- Organisation for the Prohibition of Chemical Weapons (1993) *Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (Chemical Weapons Convention)*.
- Organisation for the Prohibition of Chemical Weapons (2019) *Report of the OPCW on the implementation of the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction in 2018*. <https://www.opcw.org/sites/default/files/documents/2019/12/c2404%28e%29.pdf>, accessed 20 December 2023.
- Oya Ataman v. Turkey (2007) ECHR 493.
- Pacem Defense (2023) GR-60. <https://www.lesslethal.com/products/tld005-detail>, accessed 20 December 2023.
- PepperBall (2023) VXR Live-X. <https://pepperball.com/projectiles/vxr-live-x/> accessed 14 December 2023.
- Physicians for Human Rights (2012) *Weaponizing tear gas: Bahrain’s unprecedented use of toxic chemical agents against civilians*. <https://phr.org/wp-content/uploads/2020/11/Bahrain-TearGas-Aug2012-small.pdf>, accessed 20 December 2023.
- Physicians for Human Rights (2020). Shot in the head. <https://storymaps.arcgis.com/stories/29cbf2e87b914dbaabdec2f3d350839e>, accessed 20 December 2023.
- Ratcliffe, R. (2022) Indonesia football stadium disaster: police chief sacked as investigation launched. *The Guardian*. <https://www.theguardian.com/world/2022/oct/03/indonesia-football-tragedy-questions-mount-over-police-response>, accessed 20 December 2023.
- Reddy, M. and Allison, S. (2020) Police use sjamboks and rubber bullets to enforce Hillbrow lockdown. *Mail and Guardian*, <https://mg.co.za/article/2020-03-31-police-use-sjamboks-and-rubber-bullets-to-enforce-hillbrow-lockdown/>, accessed 14 December 2023.
- Rodríguez, Á., Peña, S., Cavieres, I. et al (2021) Ocular trauma by kinetic impact projectiles during civil unrest in Chile. *Eye* 35, 1666–1672. doi: 10.1038/s41433-020-01146-w
- Rosoboronexport (2023) Viyushka: Combined effect hand grenade. <http://roe.ru/eng/catalog/special-weapons-and-ammunitions/>



- non-lethal-grenades/vyushka/, accessed 20 December 2023.
- Slisco, A. (2020) Tear gas may have led to abnormal menstrual cycles in Seattle and Portland. *Newsweek*. <https://www.newsweek.com/tear-gas-may-have-led-abnormal-menstrual-cycles-seattle-portland-1529912>, accessed 20 December 2023.
- Stunson, M (2020) Protesters complain of unexpected side effect from tear gas: Period changes. *Miami Herald*. <https://www.miamiherald.com/news/nation-world/national/article244212707.html>, accessed 20 December 2023.
- Tempo.Co (2022) Football disaster death toll rises as one fan dies from multiple head trauma <https://en.tempo.co/read/1644308/football-disaster-death-toll-rises-as-one-fan-dies-from-multiple-head-trauma>, accessed 20 December 2023
- The Independent Commission on Policing in Northern Ireland (1999) *A new beginning: Policing in Northern Ireland*.
- The Wassenaar Arrangement (2020) *The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies, Munitions List*. [https://www.wassenaar.org/app/uploads/2020/12/Standalone-Munitions-List\\_2020.pdf](https://www.wassenaar.org/app/uploads/2020/12/Standalone-Munitions-List_2020.pdf), accessed 20 December 2023.
- Torgrimson-Ojerio, B. N., Mularski, K. S., Peyton, M. R., Keast, E. M., Hassan, A. & Ivlev, I. (2021). Health issues and healthcare utilization among adults who reported exposure to tear gas during 2020 Portland (OR) protests: a cross-sectional survey. *BMC Public Health*, 21, 803. doi: 10.1186/s12889-021-10859-w.
- Toubon, J. (2019) Décision du Défenseur des droits n°2019-029. [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=18403](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=18403), accessed 20 December 2023.
- United Kingdom Home Office - Centre for Applied Science and Technology (2014) *CAST standard for police chemical irritant sprays: CS and PAVA*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/337910/standard-police-irritant-sprays-2314.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/337910/standard-police-irritant-sprays-2314.pdf), accessed 14 December 2023.
- United Nations (1980) *Code of conduct for law enforcement officials*. Adopted by General Assembly resolution 34/169 of 17 December 1979.
- United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory (2019) *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*. UN Doc. A/HRC/40/CRP.2. [https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC\\_40.CPR\\_2.pdf](https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_40.CPR_2.pdf), accessed 20 December 2023.
- United Nations Committee against Torture (2017) *Concluding observations on the second and third periodic reports of Bahrain*. UN Doc. CAT/C/BHR/CO/2-3.
- United Nations Human Rights Committee (2020) General comment No. 37 on the right of peaceful assembly (article 21). UN doc. CCPR/C/GC/37.
- United Nations Office of the High Commissioner for Human Rights (2017) *The Minnesota Protocol on the Investigation of potentially unlawful death*.
- United Nations Office of the High Commissioner for Human Rights (2019) *Update of the situation of human rights in Indian-administered Kashmir and Pakistan-administered Kashmir from May 2018 to April 2019*. [https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf), accessed 20 December 2023.
- United Nations Office of the High Commissioner for Human Rights (2020b) *UN human rights guidance on less-lethal weapons and related equipment in law enforcement*. [https://www.ohchr.org/Documents/HRBodies/CCPR/LLW\\_Guidance.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf), accessed 16 April 2021.
- United Nations Office on Drugs and Crime and Office of the High Commissioner for Human Rights (2017) *Resource book on the use of force and firearms in law enforcement*. <https://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf>, accessed 20 December 2023.
- US National Institute of Justice (2019) *Criminal justice restraints standard NIJ Standard 1001.00 revision A*. <https://www.ojp.gov/pdffiles1/nij/253876.pdf>, accessed 14 December 2023.
- US National Institute of Justice (2017) Minimum scheme requirements to certify criminal justice restraints described in NIJ Standard 1001.00. <https://www.ojp.gov/pdffiles1/nij/250566.pdf>, accessed 14 December 2023.
- Voule, C., N. (2023) *Visit to Brazil: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*. UN Doc. A/HRC/53/38/Add.1.
- Voule, C., N. (2024) *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*. UN Doc A/HRC/55/60.
- Weibel Barahona, M. and Jara, M. (2020) Carabineros revela que disparó 104 mil tiros de escopeta en las primeras dos semanas del estallido social. *CIPER*. <https://ciperchile.cl/2020/08/18/carabineros-revela-que-disparo-104-mil-tiros-de-escopeta-en-las-primeras-dos-semanas-del-estallido-social/>, accessed 20 December 2023.

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**ANNEX – Synopsis of key information on the medical effects of less lethal weapons***CHEMICAL IRRITANT AGENTS: TEAR GAS<sup>1</sup> & PEPPER SPRAY<sup>2</sup>*

	<b>SYMPTOMS</b>	<b>SIGNS</b>	<b>DIAGNOSIS</b>	<b>TREATMENT</b>
<b>SKIN</b>	Pain Stinging	Local redness (erythema) Blistering lesions	Ocular inspection	Removing contaminated clothing or objects Irrigation with fresh water or saline solution
<b>EYES</b>	Pain <sup>3</sup> Stinging Decreased visual sharpness	Redness Profuse tearing Blinking	Ocular inspection	Irrigation with fresh water or saline solution for at least 20 minutes Analgesic eye drops Antiseptic eye drops
<b>NOSE</b>	Nasal itching	Rhinitis Sneezing	Inspection	Irrigation with fresh water or saline solution
<b>RESPIRATORY APPARATUS</b>	Shortness of breath (dyspnoea)	Cough Sensation of a foreign body in the throat Wheezing	Inspection of the mouth and throat Lung auscultation	Oxygen therapy Bronchodilators Corticosteroids

*BLUNT TRAUMA*

	<b>SYMPTOMS</b>	<b>SIGNS</b>	<b>DIAGNOSIS</b>	<b>TREATMENT</b>
<b>SKIN</b>	Pain Stinging	Local redness (erythema) Haematoma Erosion, laceration (wounds)	Visual inspection	Analgesics Local cold therapy Local wound dressing with soap and water Antiseptics Suture assessment

1 Though commonly referred to as tear gas, CS (chlorobenzilideno malononitrilo) is a white crystalline powder that is projected through the air and deposited on mucous membranes by binding to a protein receptor in the human body. Other irritant agents used for law enforcement include CN and CR.

2 Capsaicin is the active irritant agent in pepper spray. It causes irritation to the skin and especially the mucous membranes.

3 Some chemical irritant agents are dispersed as solid particles, so if ocular symptoms last more than 1-2 hours, a possible foreign body injury to the cornea should be assessed by fluorescein staining.

*BLUNT TRAUMA*

<b>MUSCLES</b>	Pain Cramps Contraction	Local inflammation Compartment syndrome due to compression of adjacent structures (vascular and nervous system) <sup>4</sup> Haematoma Functional disability (difficulty in performing certain movements) Rhabdomyolysis (flooding of the bloodstream with muscle proteins) Kidney failure	Visual inspection Ultrasound Analysis	Local cold therapy Analgesic Immobilisation Bandaging Specific treatment of: Compartment syndrome: Surgical drainage Rhabdomyolysis: intravenous serotherapy
<b>BONES</b>	Pain Functional disability	Fractures Haematoma Deformity	Inspection by palpation X-rays	Analgesic Immobilisation (casts, splints, orthoses) Surgical intervention
<b>JOINTS</b>	Pain Functional disability	Hematoma Deformity	Inspection by palpation	Analgesic Local cold therapy Immobilisation
<b>ORGANS:</b>				
<b>CENTRAL NERVOUS SYSTEM</b>	Headache Confusion Convulsions	Neurological abnormalities Vomiting	Neurological examination Computerised axial tomography	Analgesic Anti-emetics Evaluate surgical intervention
<b>LUNGS</b>	Shortness of breath (dyspnoea) Pain	Expectoration of blood (haemoptysis) Pneumothorax	Auscultation Chest X-ray Pulmonary ultrasound	Analgesic Oxygen therapy Surgical intervention
<b>HEART</b>	Chest pain		Auscultation Electrocardiogram	Analgesic Monitoring
<b>ABDOMINAL VISCERA: KIDNEY, LIVER, SPLEEN</b>	Abdominal pain Back pain Vomiting Dizziness	Haematoma Hypotension and tachycardia Blood in urine (haematuria)	Physical examination Analysis Imaging tests: Ultrasound, Computerised Axial Tomography	Analgesic Blood transfusion Surgical intervention

<sup>4</sup> The muscle groups of the human limbs are divided into sections or compartments formed by strong, inflexible fascial membranes. Compartment syndrome occurs when increased pressure within a compartment compromises the circulation and function of the tissues within that space.

# Trade in torture tools threatens detainees and protestors everywhere – it must be banned

Alice Jill Edwards<sup>1</sup>

1 PhD. UN Special Rapporteur on Torture.

## Key points of interest

- The Special Rapporteur on Torture calls for a new international treaty to ban the manufacture, use and trade in torture weapons and regulate other items.
- Twenty items of equipment, restraints or weapons are identified as unlawful owing to their inherent purpose or character as cruel, inhuman or degrading.
- The trade in such items is expected to grow owing to increasing social and political mobilization amidst multiple global and local challenges.

## Abstract

With social upheaval, economic strain, and political unrest growing, peaceful demonstrations worldwide are increasingly met with brutal tactics by law enforcement and security forces. The UN Special Rapporteur on Torture outlines her call for States to negotiate a new international treaty to ban the manufacture, use and trade in “torture tools” and regulate the trade in law enforcement equipment. Her proposal outlines two critical components: a prohibited list of items that she has deemed to be inherently cruel, inhuman or degrading, and a second controlled list of ordinary law enforcement equipment that has a high risk of misuse. Effective international regulation is imperative to curb the indiscriminate use of force by law enforcement and to uphold human dignity. Improved national regulation is also required. Research has revealed a pervasive market for these items, with more than 335 companies in 54 countries manufacturing or promoting the most egregious torture instruments. Major producers include China, the EU, and the USA, with emerging economies also contributing significantly. The outsourcing of public functions to private security companies further exacerbates the issue, underscoring the pressing need for robust national and international regulations.

**Keywords:** torture trade, international regulation, civil unrest, policing assemblies

## Introduction

In this uncertain era marked by conflict, spiraling prices and social change, peaceful protests are increasingly being policed with a heavy hand. Security forces in every region are maintaining order through often brutal tactics, which can include weapons and tools that have been developed to inflict unnecessary or excessive pain or suffering.

Take Belarus, where security forces fired expanding rubber bullets at protestors – these rounds are made of plastic but with

a core of small metal balls which expand on impact causing excessive injury (Lethal in Disguise, 2023a). In France, civilians have been injured and killed by explosive stun grenades (Lethal in Disguise, 2023b).

There are even weapons of war being deployed to police protests, like the Venom multi-barrel rocket launcher which fires as many as 30 tear gas projectiles into a crowd simultaneously. This device first developed for the US marines, has been used by security forces in several Colombian cities including

Bogotá to suppress civilian protest (Amnesty International, Omega Research Foundation, 2023, 24-25).

From the policing of Black Lives Matter demonstrations in the US, to Covid enforcement in South Africa, inherently cruel devices are deployed by states on a frequent basis.

More than 130 countries have experienced significant protests since 2017, with around a quarter of all protests lasting more than three months (Carnegie Endowment, 2024).

#### *Current situation*

Over the past eighteen months, since I became UN Special Rapporteur on Torture, my office has been inundated with allegations of torture and other cruel, inhuman or degrading treatment or punishment. I have documented multiple incidents of police violence globally in at least twelve countries in 2023. Many cases resulted in deaths or serious injuries. The prognosis is for this bleak trend to worsen, fuelled by a dangerous mix of heavily armed police and the increasing mobilization of social movements and peaceful protests. In this “year of elections” in which citizens in more than 60 countries are heading to the polls, states need to be prepared for careful and lawful responses, underpinned by appropriate rules on the use of force and type of equipment that may be deployed.

Police are human rights actors, even if they may not always see themselves as such. They must be protected and equipped with human rights-compliant equipment. It is key that when officers are issued specific equipment, they must be able to trust that such equipment is lawful.

#### **Torture instruments**

To help states navigate the extensive and growing market in law enforcement equipment and weapons, I have called for states to negotiate and agree a new international treaty to ban the very worst weapons and to regulate the use of other security tools, which are liable to be misused (Edwards, 2023).

I have presented a list of 20 different types of instruments which I describe as “torture instruments” that are currently widely in use, yet which are inherently torturous and should be immediately removed from production and trade because of their incompatibility with the international prohibition on torture (Edwards, 2023, Annex 1). These should now be considered illegal by states as well as international and national monitoring bodies.

#### *United Nations Special Rapporteur on Torture Prohibited List*

This Prohibited List includes a range of restraints from cage beds to thumb screws. Also included are the particularly terrifying

millimetre wave weapons, which are experimental weapons used as a form of directed energy to inflict pain from a distance.

Striking or kinetic impact weapons like spiked batons that can easily damage the skin are listed, as well as weighted gloves and batons which dramatically increase the force of an impact and which can cause excessive pain. These were used in Hong Kong to beat peaceful protesters from behind, often when they were already restrained or were running from a demonstration (Amnesty International, Omega Research Foundation, 2020, p. 18).

There are also direct impact devices like electric shock shields and batons, as well as electric shock weapons including body worn devices which deliver a piercing electric shock to a person at the press of a button.

Human rights organizations have documented these being used in Saudi Arabia, where direct contact electric shock devices were used to punish detainees criticizing their poor living conditions. In Cambodia, electric shock batons have been used in police raids. In Egypt, suspected terrorists were suspended by their limbs from the ceiling while handcuffed and blindfolded. Electric shocks were applied to their genitals as well as other sensitive parts of the body and face, mostly using electric shock weapons (Amnesty International, Omega Research Foundation, 2020, 8-9).

#### *Legality of torture tools*

Torture is a vile form of cruelty which despite being universally prohibited under international law continues to be facilitated and even encouraged by free trade in torture tools. While many of the items are illegal in the European Union and in other countries, through national legal frameworks, they are not universally banned despite being as barbaric as the racks and thumbscrews favoured by medieval torturers. In my perspective, as Special Rapporteur on Torture, these implements are now illegal.

There are several regulatory regimes that govern the trade of military and dual-use items, which are considered to pose human rights or national security risks owing to their technical specifications or potential uses (United Nations Human Rights Council, 2021). Many States have national regulations in respect of military or dual-use equipment including firearms and ammunition. However, regulation of trade in other equipment that can be used by public authorities in law enforcement, as well as prisons or other places where people are deprived of their liberty, is presently far more limited.

#### **Proposed international legal instrument**

There is currently no global agreement governing the trade in items intended – or being misused – for torture or other cru-

el, inhuman or degrading treatment or punishment. In practice this means that State and private companies are free to develop and sell items that inflict unnecessary or excessive pain. They are quite literally profiting off human suffering.

At the 2023 United Nations General Assembly I called on States to develop an international torture-free trade agreement that would complement and reinforce existing obligations. I proposed two components:

A ‘Category A’ Prohibited list of items which I have classified as being inherently cruel, inhuman or degrading, either by design or purpose. These items should be removed from production and use immediately (Edwards, 2023, Annex 1).

A ‘Category B’ list which includes ordinary law enforcement equipment to be controlled, because they pose a heightened risk of misuse (Edwards, 2023, Annex 2).

My proposal includes an early warning trigger so that a trade could be suspended or cancelled when there are reasonable grounds that torture or other serious human rights violations are being undertaken or prepared.

#### *Scope of trade*

The trade in law enforcement equipment, a sub-set of the overall defence and homeland security market, is significant and estimated to reach 27 billion USD by 2028, growing by 8 per cent per annum (Research and Markets, 2023). Much of this forecasted rise is correlated to expected rises in civic mobilization.

This is not something that affects just one region, or a few rogue states, this is a global challenge.

#### **Size of trade in torture tools**

To provide an indication of the scale and character of the trade in items covered by this trade, with the support of the Omega Research Foundation, I undertook research into commercial companies involved in the manufacture and supply or promotion of items that are considered inherently cruel, inhuman or degrading (category A items), and equipment that could be misused for torture or other ill-treatment (category B items), over the period January 2018 to June 2023. Information was gathered from a range of sources, including company websites, industry directories, as well as the exhibitor listings of international arms and security trade fairs.

According to this research, more than 335 companies in 54 countries are manufacturing and selling items on the category A list. Nearly half of these companies were based in Asia (146), with the next highest number in Europe (76) followed by North America (71).

Information was not available regarding millimetre wave weapons.

**Table 1:** Number of companies and states manufacturing torture tools

Item category	Number of Companies	Number of States
Category A restraints	92	21
Thumb Cuffs	51	15
Category A striking kinetic impact weapons	133	35
Spiked batons and spiked shields	27	3
Category A electric shock weapons	200	38
Direct contact electric shock weapons	196	38

We were not able to identify the total number of companies engaged in manufacturing and/or promoting category B items, but did identify that companies manufacturing and promoting such items were operating in at least 63 States. For example, restraints were manufactured or promoted in 44 States, while striking and kinetic impact weapons were manufactured or promoted in 54 countries. Projectile electric shock weapons were manufactured or promoted in 13 States; while chemical irritants and delivery mechanisms were manufactured or promoted in 52 States (Edwards, 2023, Annex 3).

Major producers and exporters of items for law enforcement include China, the EU, Israel, Russia, the UAE, and the USA. Companies in emerging economies like Brazil, Türkiye and South Africa also produce for their domestic market and export widely.

Corporate accountability for human rights violations is widely recognized. Governments have a responsibility to demonstrate leadership, to speak out loudly against torture and to take action to show that all forms of torture – and the means by which they are perpetrated – are unacceptable.

Another trend, outsourcing public functions to private corporations, for example to private security contractors, transportation companies, and correctional service providers, further fuels the market and makes the need for national and international regulation more pressing.

#### **Conclusion**

Police and other public authorities must be properly equipped and protected. However, precisely because weapons such as

these can cause harm potentially amounting to atrocity crimes, there is a need for better regulation, at national and international levels.

### Acknowledgements

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### References

- Amnesty International, Omega Research Foundation (2020), Ending the Torture Trade: the path to global controls on the 'Tools of Torture', *Amnesty International*, <https://www.amnesty.org/en/documents/act30/3363/2020/en/>
- Amnesty International, Omega Research Foundation (2023), "My eye exploded": the global abuse of kinetic impact projectiles, *Amnesty International*, <https://www.amnesty.org/en/documents/act30/6384/2023/en/>
- Carnegie Endowment (2024). Protest Tracker, *Carnegie Endowment for International Peace*, <https://carnegieendowment.org/publications/interactive/protest-tracker>
- Edwards, A. J., United Nations Special Rapporteur on Torture (2023). Thematic study on the global trade in weapons, equipment and devices used by law enforcement and

- other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment. *United Nations General Assembly*, UN doc. A/78/324. <https://undocs.org/Home/Mobile?FinalSymbol=A%2F78%2F324&Language=E&DeviceType=Desktop&LangRequested=False>
- PHR, INCLO, Omega Foundation (2023a), Case Study: Belarus, *Lethal in Disguise*, <https://lethalindisguise.org/case-studies/belarus/>
- PHR, INCLO, Omega Foundation (2023b), Case Study: France, *Lethal in Disguise*, <https://lethalindisguise.org/case-studies/france/>
- Research and Markets (2023), Global Police and Law Enforcement Equipment Market (2023 –2028)
- United Nations Human Rights Council (2021), Resolution 46/15: Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials. *United Nations General Assembly*, <https://documents.un.org/doc/undoc/gen/g21/078/07/pdf/g2107807.pdf?token=yW0JrSomnZ2cyaYmmL&fe=true>

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# Health impact of electric discharge weapons, a review of case studies

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## Key points of interest

- The review assembles findings from case studies about the health effects of electric discharge weapons (EDWs) which are increasingly used by law enforcement agencies.
- The case studies document a broad range of adverse health outcomes including death after EDW exposure.
- When assessing patients exposed to EDWs, including in torture and ill-treatment cases, it is important to be aware of the different types of potential injury.

## Abstract

*Introduction:* Electrical discharge weapons (EDWs) are increasingly used by law enforcement around the globe as a less lethal option to firearms. Concerns have been raised about their use, inter alia from the UN Committee Against Torture (UNCAT). The purpose of this manuscript is to provide an overview of case studies to assess the health consequences of EDW exposure. *Methods:* Medline and Pubmed were searched for case studies on EDWs without restriction on language or date. Screening was first at abstract level and then at full article level. Articles were excluded if they were not case studies, concerned children under 15 years old or were off topic. A PRISMA flow diagram was created. *Results:* A total of 71 studies were included, and they demonstrate a wide range of health consequences from minor injuries to lethal conditions. The injuries can be classified as direct and indirect, i.e., related to the use itself (e.g., penetration by darts) and related to falls and burns following neuromuscular incapacitation and ignition of flammable fluids. Cardiac incidents – some being fatal – as well as eye injury were the health consequences found most reported. Description of pain and mental suffering related to EDW exposure was lacking in the reviewed case studies. *Discussion:* Evidence in the reviewed case reports demonstrates that EDWs have in fact led to physical and most likely mental suffering and even death, notwithstanding the epidemiological limitations of case reports in establishing causality at population level. When assessing patients and when documenting cases where persons may have been exposed to EDWs, including torture and ill-treatment cases, it is important to be aware of the different types of health consequences.

**Keywords:** Electric discharge weapon (EDW), Conducted energy weapon (CEW), Conducted energy device (CED), taser, adverse health effects.



### Introduction

Electric discharge weapons (EDWs) are hand-held devices that by means of electrical current induce pain or disrupt voluntary control of muscles, causing neuromuscular incapacitation.

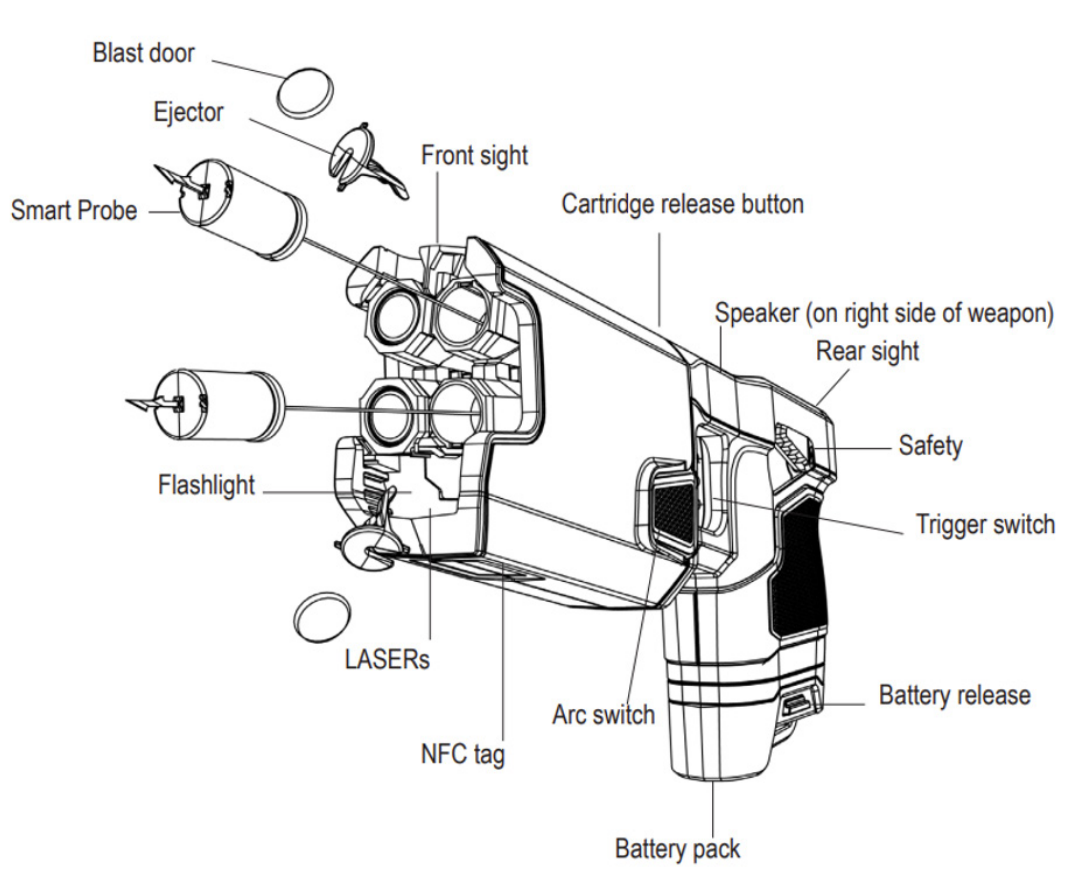
An EDW is either a direct contact weapon such as a stun gun or a projectile weapon referred to as a conducted electric/electrical/energy device/weapon (CED) or (CEW) which can be shot at the subject, such as the Taser.

A stun gun generates high voltage low amperage current and can be activated when the weapon is pressed directly against a person so that its electrodes come in direct contact with the skin of the person. The weapon induces severe pain, expected to ensure compliance. Thick clothes may, however, reduce the current and thereby the effect.

CEDs use compressed nitrogen to fire two probes connected to the device through wires from a distance of up to

13.7 meters (Taser 10) (Axon Law Enforcement, 2024). The probes may be referred to as darts and consist of a metal barb that penetrates clothes and skin down to around 6 mm depth, delivering a series of ultrashort electrical pulses of a duration of around 0.1 second. This use of the weapon (“probe mode”) affects nerve fibers and to some degree muscle tissue directly, leading to substantial pain and, if the probes are sufficiently separated, involuntary muscle contractions and loss of regional muscle control (neuromuscular incapacitation), causing the person to fall to the ground (Kunz et al., 2024). In addition, heat induced injuries may develop in skin and other soft tissue with high resistance, as seen in accidental electrical injuries (Mansueto et al., 2021). Most CEDs can also be used as a stun gun (“drive-stun” mode) and be pressed directly towards the target to deliver painful electrical shock.

**Figure 1.** Diagram of Taser 7



Source: Axon Enterprise, Inc. (2024). TASER 7 and TASER 7 CQ Energy Weapons User Manual.

Similar to stun guns, other devices relying on pain compliance through electric shock include electric shock batons and stun cuffs as well as electric stun vests, electric riot shields and stun sleeves which have been banned in the European Union since 2006 (European Council, 2011).

Updated data on global usage of EDWs are not readily available, but it was estimated in 2011 that EDWs were used by over 15,000 law enforcement and military agencies (Holder et al., 2011). EDWs are promoted as less-lethal weapons in comparison to deadly force (firearms). While there exists no official universal model for the use-of-force continuum, it is inherently understood that legitimate force is that which complies with the law, is necessary because all less-violent methods have been exhausted and allows an officer to manage the risk with proportionate force. Many law enforcement agencies have guidance on the degree of force to be used based on the situation. This may start with mere officer presence moving up to verbal communication, then mild physical force potentially moving up to stronger physical force and then the use of tools such as batons, pepper spray or EDWs. The final stage in the use of force continuum is deadly force such as use of firearm (NIJ, 2009). The United Kingdom police force for example, place the Taser M26 directly before firearms in their hierarchy of use-of-force (Jenkinson et al., 2006).

Taser safety and health information issued by its producer lists potential adverse effects including bone fractures, injuries due to falls or uncontrolled movement, and increased risk of seizures. The information note warns against usage on “pregnant, infirm, elderly, low body-mass index persons or small child” and states that injuries are more likely among “people with pre-existing injuries, orthopedic hardware, conditions or special susceptibilities, including pregnancy, low bone density, spinal injury, or previous muscle, disc, ligament, joint, bone or tendon damage or surgery.” (Axon Enterprise, Inc., 2018).

The United Nations Committee against Torture (UNCAT) is concerned by the risk of excessive use of force via CEDs and recommends States to ensure that their use is limited to situations where there is an immediate threat to life or risk of serious injury, to prohibit their use against minors, pregnant women, and in health care and custodial settings, to ensure that their use is in compliance with the prohibition of torture and the principles of necessity and proportionality, and to ensure proper training in their use and safeguarding against their misuse (UNCAT, 2018). The Committee expressed “deep concern” in its review of Portugal in 2008 regarding the purchase of Taser X26 by the State concluding that the impact of the weapon “would appear to violate articles 1 and 16 of the Convention [against torture]” relating to the definition of torture and to

state obligation to prevent torture (UNCAT, 2008). Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) investigated and documented allegations of ill-treatment or torture related to the use of EDWs by law enforcement in countries including Bulgaria and Russia (Council Of Europe, 2013, 2015).

A 2021 systematic review on the health risks of Tasers found that the risk of adverse outcomes due to use is low (Baliatsas et al., 2021). However, the review also identified methodological and quality issues with most studies. Studies were all experimental, largely recruiting a small sample of healthy individuals who are unlikely to represent the population exposed to Tasers. The review further found that many studies received funding from the Taser manufacturer (Baliatsas et al., 2021). The finding that there is a need for higher quality research is echoed in other reviews (Semple et al., 2021; Sheppard & Welsh, 2022).

Nevertheless, studies report that injuries occur in 20% - 41% of cases involving a range of EDW use (Gardner et al., 2012; Terrill & Paoline, 2012). For example, one study of police departments in California, found a 6.4-fold increase in the rate of in-custody deaths not involving firearms force compared to the average mortality rate in the five years prior to Taser deployment (Lee et al., 2009). The rate decreased to pre-deployment levels after 2-5 years. Studies have documented a broad range of physical injuries from EDW use in the law enforcement context (Lokdam et al., 2018).

The purpose of the current review is to examine case studies to assess the health consequences of EDW use. This will contribute to knowledge on EDWs since recent systematic reviews have excluded case studies, and there currently does not exist an overview of the types of adverse health consequences that have occurred upon application of an EDW.

## Methods

This is a review of case studies on the health impact of EDWs. The search was conducted on two search engines Medline through the Ovid interface and Pubmed. The MeSH term *Conducted Energy Weapon Injuries* was applied along with *stun gun* and *taser* as keywords. The search was limited to a focus on humans and a case study design, but no other restrictions were applied such as language or publication year. See search strategies in the supplementary material. The search was complemented with handsearching. Exclusion criteria were wrong study design (not case study), subject below 15 years of age or study not addressing the health consequences of EDW use (off topic). Article selection took place in two stages. Two authors (physician and epidemiologist) screened titles and abstracts in parallel. Full article texts were obtained and screened by one author (physician)

who also conducted the handsearching for additional literature. All articles were uploaded in Zotero reference manager software (Takats et al., 2023). All articles except three were in English. Two in French could be read by the authors and one in Russian was machine translated into English by DeepL (DeepL SE, n.d.).

A data extraction form was created in Excel and populated by one author (physician) with data on the year of publication, age and gender of the victim(s), the type of weapon used, the affected organ and the health outcome. See the populated data extraction form in the supplementary material. The data extraction form was then analyzed by grouping the case studies according to trauma mechanism, subdividing them into direct and indirect injuries and different relevant mechanisms under each of these headings.

## Results

Our search yielded 121 reports from two search engines of which 54 were duplicates, six were excluded for being off topic, two for studying children, and one was the wrong study design. In addition to the resulting 58 records, 13 studies were identified through handsearching. A total of 71 studies were included in this review. See PRISMA flow diagram in the supplementary material as well as a bibliography of reviewed articles.

The 71 articles were published between 1987 and 2023. Only three were published before 2000, one in 1987, one in 1992 and one in 1997, none in the years 1998-2002, and the rest from 2003 onwards.

Weapons used were most often described as Tasers. Five used the more general terms CED/CEW and two used the term stun gun. However, it is unclear whether the word “taser” was used by some authors as a general term for an electrical discharge weapon. Only thirteen authors provided the full details of the weapon model. In many cases, it was clear if a CED/CEW had been used from a distance because the darts were subsequently located, but if the presence of darts was not described, it was often unclear whether a device could have been used in “stun-drive” mode (direct contact). In addition, many case studies did not specify the number of times a weapon was discharged on an individual.

Not all studies provided information about the gender of the person on whom the device was used, but most did, and they revealed a far larger number of men than women with only 7 women as opposed to 91 men in the 71 case studies. In 12 cases, the gender was not reported. Ages ranged from 15 to 61 years.

In addition to written case descriptions, many studies included pictures illustrating the physical damage described as well as other examination results such as X-rays and electrocardiograms (ECGs).

Overall, the reviewed articles covered two different types of injuries related to EDW incidents: Injuries directly caused by the EDW and injuries related to the circumstances around the use of the EDW.

### *Direct injuries*

Direct injuries resulting from EDW exposure can be subdivided into four categories:

1. Injuries caused barb and/or dart penetration.
2. Injuries directly related to the electrical discharge.
3. Injuries related to electrically induced muscular contraction.
4. Injuries where it has not been possible to establish the exact mechanism.

#### 1. Penetrations by barbs and darts

Injuries by CED barbs and darts to many different body parts have been reported:

##### *Skull*

Eight single-case studies report damage to the skull by penetrating darts (Chandler et al., 2013; Cheek et al., 2013; Crawley et al., 2023; Delavar & Thompson, 2021; Le Blanc-Louvry et al., 2012; Lewis & Lewis, 2016; Mangus et al., 2008; Rehman et al., 2007). In three of the cases, the dart was lodged in the bone and could be successfully removed, in two it had penetrated the frontal sinus, in one it had penetrated through the bone but not reached the brain tissue, and in two cases the dart had penetrated through the bone into the underlying brain tissue. In two of the three cases where the dart penetrated the bone to the brain, no health consequences were reported, but in the third one, where a small bleeding (hemorrhage) had formed in the frontal part of the brain around the tip of the dart, and after removal of the dart, the patient reported persistent throbbing headaches during physical efforts and certain movements of the head (Le Blanc-Louvry et al., 2012).

##### *Eyes and surroundings*

Injury to the eyes and surrounding area is among the most frequently reported injuries caused by penetration by darts and barbs. Out of 15 such cases reported, at least three resulted in removal of the eye or parts of the eye (enucleation or evisceration) due to irreversible damage with loss of vision, and in others there was a substantial reduction of vision (Chen et al., 2006; de Runz et al., 2014; Gapsis et al., 2017; Han et al., 2009; Jey et al., 2016; Li & Hamill, 2013; Moysidis et al., 2019; Ng & Chehade, 2005; Rafailov et al., 2017; Sharabura et al., 2021; Teymorian et al., 2010). In one lucky incident, the eye hit was the one

where a person already had an implant, whereas the only seeing eye was spared (Moysidis et al., 2019).

#### *Face*

Only one study reported penetrating midfacial injury (Campbell & Clark, 2019). In this case, the barb became embedded in the area of the cheek below the eye (the sub tarsal region of the cheek), and surgical removal under general anesthetic was uncomplicated. Exploration of the wound exhibited no damage to adjacent structures.

#### *Throat (pharynx), trachea and chest*

One study reported on penetration of the pharynx (throat) that led to emphysema (air trapped in the tissues) on the upper part of the body. Surgery was required to investigate the extent and exact location of the injury (Al-Jarabah et al., 2008). Another study reported on possible penetration of the trachea leading to pulmonary interstitial emphysema and a pneumomediastinum (air in the mediastinum) (Maher et al., 2015). As an alternative explanation, the authors suggest that the mechanism could be a tracheal tear after a valsalva manoeuvre (forced expiration against a closed glottis). Finally, in one case a dart penetrated the pectoral (upper chest) muscle causing a pneumothorax (collapsed lung) (Hinchey & Subramaniam, 2009). One study documented a dart lodged in the clavicle (collar bone) (Willoughby et al., 2022).

#### *Fingers*

Five studies describe penetrating injury to fingers (Abdelaty et al., n.d.; Becour, 2013; De Courcey & Jones, 2021; Dearing & Lewis, 2005; Dunet et al., 2015). In three of these, penetration resulted in a fracture, and in two, a tendon was lacerated.

#### *Testis*

One study described penetration of a testicle leading to a small testicular hematoma (Theisen et al., 2016).

#### *Gastro-intestinal tract*

The earliest case identified in this review about the potentially harmful effects of a taser dart was published in 1987 and involved a psychiatric patient who following an incident with a Taser swallowed a dart that was lodged in his clothes (Koscove, 1987). After careful observation in hospital, the patient eventually passed the dart without any complications.

## 2. Electrically induced injuries

A range of injuries directly related to the electrical discharge from an EDW has been recorded similar to electrical injuries observed in other circumstances. These include:

#### *Burns*

Four articles describe burns following the use of EDWs (Abada et al., 2014; Anders et al., 2003; Burdett-Smith, 1997; Burmatov et al., 2011). The burns ranged in severity from superficial dot-like lesions to a severe extended burn on the scalp requiring plastic surgery. Interestingly, three of the four cases described were not related to law enforcement but to assaults.

#### *Electrically induced cataract*

One case of electrically induced cataract has been reported (Seth et al., 2007). In this case, the patient presented six days after having been exposed to EDW discharge in the face. A burn was found on the eyelid together with the cataract.

#### *Brain injury*

One case of tonic-clonic seizures following a Taser shot to the head was reported in a police officer in his thirties who was accidentally hit. The officer had no known history of epilepsy and did not experience any subsequent epileptic fits (Bui et al., 2009). In another case, an otherwise physically healthy 32-year old man presented to the emergency department following EDW discharge during an altercation with the police. Upon arrival, he had persistent change in mental status with speech difficulty as well as generalized right-sided weakness, and he had abrasions on the forehead from the EDW barb. It was found that the patient had developed cerebral infarction (an acute stroke). The authors conclude that electrical neurovascular injury with spasms and vasospasm and endothelial injury (injury of the blood vessels) was the most likely mechanism (Bell et al., 2013).

#### *Cardiac arrhythmias*

There is a complicated relationship between EDWs and the heart. The outcome of certain irregular heart rhythms is potentially fatal, so it may come as no surprise that this is the area where most single cases have been reported. Some of these have been directly attributed to the electricity caused by the EDW, among them one case of atrial fibrillation (irregular heart rhythm) that converted to a normal sinus rhythm immediately following an EDW incident (Richards et al., 2008). Another case involved a 16-year old who developed atrial fibrillation (Multerer et al., 2009). Interestingly, both cases involved a CED in drive mode, at least one of them being applied to the chest. In addition, no less than 11 cases of life-threatening irregular heart rhythms including ventricular tachycardia, ventricular fibrillation and asystole (lack of electrical impulses in the heart) have been reported (England et al., 2015; Kim & Franklin, 2005; Naunheim et al., 2010; Schwarz et al., 2009; Zipes, 2013). All cases involved discharge to the chest either directly or through darts. At least sev-

en of these cases had a fatal outcome. In all of these, loss of consciousness was seen in direct relation to the EDW incident(s). Cardiac rhythm was recorded in most cases five to ten minutes after loss of consciousness though in one case it only occurred thirty minutes later. In one case, asystole was recorded, while in the other cases ventricular tachycardia/ventricular fibrillation was observed. One person survived with memory impairment and two spent more than three weeks in hospital following the incident, one because of a complicating pneumonia in the aftermath of the incident and one for rehabilitation purposes. It is also worth mentioning that six of the reported cases occurred in very young men, one who was described as adolescent and five as 16-17 years old. Three of these did not survive.

Pacemakers may also be impacted by the electricity. In four cases involving one man in his twenties and three in their fifties who had pacemakers that recorded their heart rhythm, the recording showed myocardial capture/ventricular "fibrillation" during tasing (Cao et al., 2007; Haegeli et al., 2006; Paninski et al., 2013; Pope et al., 2023). In all cases, the recorded heart rhythm returned to normal spontaneously, and there were no clinical implications of the incidents. Nevertheless, some of the authors have speculated that such incidents could activate an implantable cardioverter defibrillator.

#### *Nerve damage*

One case reported on a woman assaulted directly on the neck with a stun gun (Bonnar et al., 2019). She developed an acute brachial plexus lesion (severe lesion of the nerves to the shoulder and arm) resulting in palsy and multimodal sensory loss in one arm (weakened arm muscles and loss of sensation in the arm), speculated to be the result of multiple stimulation and direct application to Erb's point. At two-years follow-up, weakness was still present in the deltoid (shoulder) muscle together with pain and reduced sensation in the forearm.

#### *Delirium*

One case story reports on a 37-years old man with no prior psychiatric history who developed agitation and delirium on EDW exposure leading him to spend three days in intensive care (Feehey et al., 2010). The authors conclude that the case raises the possibility that EDWs may cause or contribute to excited delirium because similar cases have been observed in persons who have otherwise been exposed to high levels of electric current.

#### *Spontaneous abortion*

One author reported on a spontaneous abortion of an 8-10 weeks pregnancy that started with spotting on the day follow-

ing the EDW event where darts hit one thigh and the abdomen above the uterus (Mehl, 1992).

### 3. Injuries due to muscular contractions

The EDW induces muscular contraction that may be so strong that it gives rise to damage to muscles, tendons and even bones.

#### *Fractures*

Three cases of compression fractures in the spine were reported, two of these having two or more simultaneous fractures (Sloane et al., 2008; Tyagi et al., 2017; Winslow et al., 2007). Interestingly, all cases were related to training of law enforcement officers. In addition, one case involving a fracture of the scapula (shoulder bone), also related to training was reported (Coad & Maw, 2014).

#### *Tendon ruptures*

One case of bilateral patellar (knee) tendon rupture has been attributed to EDW-induced muscle contraction (Hudak et al., 2011). Similarly, a case of rupture of the iliopsoas (hip) muscle and the gluteus minimus (smaller gluteal) tendons was reported (Giacconi et al., 2011). The latter case required surgical intervention.

#### *Rhabdomyolysis*

There are four cases reported in which rhabdomyolysis (a serious medical condition that can cause kidney failure) due to extensive muscle damage followed the use of an EDW (Gleason & Ahmad, 2015; Gross et al., 2013; Sanford et al., 2011). In one of the cases, the outcome was death due to permanent kidney failure (Gross et al., 2013). In two other cases, it was speculated that the involved young men had been in a physical fight which might also have caused muscle damage (Sanford et al., 2011).

### 4. Unknown mechanisms

In some instances, the exact pathogenetic mechanism has not been established. This includes three cases of acute myocardial infarction (heart attack) in healthy young men aged 20, 33 and 37 (Baldwin et al., 2010; Belen et al., 2015; Ben Ahmed et al., 2013). The pathogenesis of these myocardial infarctions is unknown, and they occurred at different times following the incident (immediately and after ninety minutes and four hours respectively), but Baldwin et al. speculate that it could be due to a spasm in the coronary artery (that supplies the heart muscle with blood) (Baldwin et al., 2010). Other cases are sporadic and include a person who suffered retinal detachment caused by bleeding speculated to have potentially resulted from thermal damage due to the electricity (Sayegh et al., 2011); a wom-

an with pre-existing conditions (systemic lupus erythematosus, kidney affection and potential hypertension) who suffered lupus coagulopathy (blood clotting complication) (Bryant et al., 2014); and a young male who developed hypertension and kidney affection leading to hospitalization after a Taser exposure. In this case, the authors conclude that it is unclear whether the EDW contributed to the kidney affection otherwise attributed to synthetic cannabinoids (Cooks et al., 2016).

#### *Indirect injuries*

The indirect injuries in relation to EDWs can be divided into three categories:

1. Falls
2. Burns
3. Aspiration

#### 1. Falls

Falls may in fact be among the most frequently occurring negative consequences of the use of EDWs. In one mono-center study over five and a half years, 46 persons were seen who had been involved in EDW incidents (Becour, 2013). Of these, 18 had injuries stemming from falls during the incidents. These included cutaneous and subcutaneous hematomas and abrasions, as well as a fractured humerus (head of the bone of the upper arm) due to a fall on the shoulder, a scaphoid (wrist) bone fracture following a fall on the palm of the hand, and a digital (finger) fracture. In another study, 16 cases of fatal traumatic brain injury following falls during the incidents were identified (Kroll et al., 2016). In a third study, falls resulted in hematomas (serious bruises) to the skin, a nasal fracture, a fracture of the bone surrounding the eye and a skull fracture resulting in intracranial (brain) bleedings (Mangus et al., 2008). Finally, a 42-year-old man who threatened to stab himself with a knife, was subject-

**Figure 2.** Matrix of key findings

Body part	Documented damage	References
Skull and brain	<i>Penetration:</i> Darts lodged in bone, sinus and brain tissue.	Chandler et al., 2013; Cheek et al., 2013; Crawley et al., 2023; Delavar & Thompson, 2021; Le Blanc-Louvry et al., 2012; Lewis & Lewis, 2016; Mangus et al., 2008; Rehman et al., 2007.
	<i>Electrically induced damage:</i> Tonic-clonic seizure and acute stroke.	Bui et al., 2009; Bell et al., 2013.
	<i>Indirect injuries:</i> Traumatic brain injuries following falls, some fatal.	Kroll et al., 2016; Mangus et al., 2008.
Eyes	<i>Penetration:</i> Darts lodged in eye and surroundings, some with loss of vision.	Chen et al., 2006; de Runz et al., 2014; Gapsis et al., 2017; Han et al., 2009; Jey et al., 2016; Li & Hamill, 2013; Moysidis et al., 2019; Ng & Chehade, 2005; Rafailov et al., 2017; Sharabura et al., 2021; Teymoorian et al., 2010.
	<i>Electrically induced damage:</i> Cataract.	Seth et al., 2007.
	<i>Unknown mechanism:</i> Retinal detachment.	Sayegh et al., 2011.
Face	<i>Penetration:</i> Dart lodged in facial tissue.	Campbell & Clark, 2019.
	<i>Indirect damage following falls:</i> Fractures.	Mangus et al., 2008.
Throat, trachea and chest	<i>Penetration:</i> Emphysema, pneumomediastinum and pneumothorax.	Al-Jarabah et al., 2008; Maher et al., 2015; Hinchey & Subramaniam, 2009.
	<i>Indirect damage:</i> Aspiration causing fatal pneumonia.	Plenzig et al., 2021.

Body part	Documented damage	References
Heart	<i>Electrically induced damage:</i> Arrhythmias, some fatal.	Multerer et al., 2009; England et al., 2015; Kim & Franklin, 2005; Naunheim et al., 2010; Schwarz et al., 2009; Zipes, 2013.
	<i>Unknown mechanism:</i> Acute myocardial infarction.	Baldwin et al., 2010; Belen et al., 2015; Ben Ahmed et al., 2013.
Genitals	<i>Penetration:</i> Testis hematoma.	Theisen et al., 2016.
	<i>Electrically induced damage:</i> Spontaneous abortion.	Mehl, 1992.
Limbs and spine	<i>Penetration:</i> Fractures (of fingers) and laceration of tendons.	Abdelaty et al., n.d.; Becour, 2013b; De Courcey & Jones, 2021; Dearing & Lewis, 2005; Dunet et al., 2015
	<i>Damage due to muscular contractions:</i> Compression fractures, tendon ruptures, rhabdomyolysis.	Sloane et al., 2008; Tyagi et al., 2017; Winslow et al., 2007; Coad & Maw, 2014; Hudak et al., 2011; Giaconi et al., 2011; Gleason & Ahmad, 2015; Gross et al., 2013; Sanford et al., 2011.
	<i>Indirect damage following falls:</i> Fractures.	Becour, 2013.
Skin	<i>Electrically induced damage:</i> Burns ranging from superficial dot-like lesions to severe extended burn.	Abada et al., 2014; Anders et al., 2003; Burdett-Smith, 1997; Burmatov et al., 2011.
	<i>Indirect damage:</i> Hematomas and abrasions following falls. Severe burns, some fatal (after ignition of fumes or fluids in surroundings).	Becour, 2013; Mangus et al., 2008; Kroll et al., 2017.
Nerves	<i>Electrically induced damage:</i> Lesion of brachial plexus.	Bonnan et al., 2019.
Immune system	<i>Unknown mechanism:</i> Lupus coagulopathy.	Bryant et al., 2014.
Neuro-psychiatry	<i>Electrically induced damage:</i> Agitation and delirium.	Feeney et al., 2010.

ed to an EDW in an attempt to prevent him from doing so after which he fell down on the knife receiving a stab wound in the abdomen (Sharma et al., 2009).

## 2. Burns

Burns have already been mentioned as a direct consequence of the electrical discharge to the skin, but another situation was described in which the electrical discharge from an EDW ignites an explosive fume or a flammable fluid. One study identified 23 such cases of which ten were classified as major burns (Kroll et al., 2017). Of these, six were fatal. Some involved per-

sons who had soaked their clothes or surroundings in petrol, but one police officer was also killed in an incident where police discharged the EDW inside a house where a person had turned on the natural gas.

## 3. Aspiration

There is one case study in which a 49-year-old man with several different diseases and severe overweight collapsed during exposure after which he vomited, and the vomit entered the airways. He developed pneumonia and died of multi-organ failure (Plenzig et al., 2021).

## Discussion

Tom Swift was the main character in a young adult novel published in 1911, of which one volume was named “Tom Swift and His Electric Rifle”. This imaginary weapon could shoot through walls without leaving a hole, was powerful enough to bring down elephants, rhinoceroses, buffaloes and whales, and saved the life of the protagonist on multiple occasions (Wikipedia, 2024). Sixty years later, the novel gave rise to the name of one of the most commonly used electric discharge weapons, the Taser (Tom Swift and His Electric Rifle), now with an extra A to produce a pronounceable word.

Since then, the real-life Taser and other EDWs have generated intense discussions about their danger. With this literature study, we attempted to compile existing case studies reporting on potential health consequences of EDWs in order to create an overview which we have found missing in the literature.

We have reported on the findings as they have been presented by the authors of the case studies. In some of the cases, in our view a clear direct or at least a very plausible link between the EDW and the injury and harm is presented, for example those where darts and barbs have been found penetrating body parts or where it is clear that an injury occurred at the exact moment of the EDW being fired against a person, like pain arising in a certain muscle group immediately after the incident. However, in other situations the association between EDW use and the mechanism resulting in injury in our view seems more unclear. For example, the association between EDW use and health outcome seems unclear where an underlying disease was seemingly exacerbated by the EDW impact like the reported lupus coagulopathy; where many other reasons for an incident may be present such as the case of an abortion in the first trimester of pregnancy; and where the victim was under the influence of substances that may themselves have contributed to the situation in question.

In no situation has the association between EDWs and adverse health outcomes been more contested than in the case of cardiac incidents. Several severe cases were reported including fatal incidents in very young people. A malignant arrhythmia that causes cardiac arrest will not be identifiable at autopsy. It is therefore not surprising that such cases generate debate about whether the incident could be directly attributed to the EDW discharge and resulting irregular cardiac rhythm. Kroll et al. revisited the cardiac arrests mentioned in the results section here (Kroll et al., 2014). They conclude that many of the case reports confuse a postural collapse or syncope with a cardiac arrest. They also criticize the authors for ignoring literature showing that ventricular fibrillation is only induced if the distance from dart to heart is below a certain limit. Last but not least, they

criticize the authors for not giving any weight to the opinions of the medical examiners who in seven of eight fatal cases did not list the EDW as a primary cause of death. In another retrospective study, Swerdlow et al. collected records from 200 cases of CED-associated, nontraumatic sudden deaths from 2001 to 2008 (Swerdlow et al., 2009). Of those, they only found 56 eligible for further study, and they reviewed available ECGs, video and audio recordings, CED data and autopsies including toxicologic data. In the 144 cases not included in the study, there were no ECGs available, and in only twelve cases did the authors succeed in obtaining records of the initial cardiac rhythm. Based on their findings, the authors concluded that only one case was consistent with electrically induced ventricular fibrillation in which neither drug use nor cardiac disease provided alternative explanations. The authors conclude that their data do not support electrically induced irregular heart rhythms, such as ventricular fibrillation, as a common mechanism of sudden death after CEW discharge, and that the specific mechanisms for most of these deaths remain unknown. The challenges of obtaining decisive information in cases of cardiac arrest are well-known. Where EDWs are involved, we would caution against jumping to the conclusion that EDW discharge did not play a role if no evidence can be found confirming a causal mechanism. In other words, absence of evidence is not evidence of absence. Therefore, in those cases where there is clear evidence of other causal mechanisms, it may be fair to rule out EDW-related cardiac causes of death, but in those where no other explanations can be found, EDW discharge should in our view as a minimum be considered as a potential contributor to death.

In this review, we have focused on case studies to provide as broad a picture as possible of the many potential injury types observed following EDW use. One interesting question is related to the frequency of the different types of injuries, which for obvious reasons cannot be deducted from the cases presented. While this is beyond the scope of this article, an interesting finding from one of the articles reviewed merits attention: One-third of the 48 patients seen in the study by Becour had some kind of injury, albeit often minor such as abrasions (Becour, 2013). This is in line with Strote et al. who found that significant injuries related to six years of law enforcement CEW use in one city were rare (Strote et al., 2010); and findings by Bozeman et al. who found mild or no injuries after CED use in 1198 out of 1201 subjects during three years of law enforcement across six different law enforcement agencies (Bozeman et al., 2009). In the latter study, two subjects experienced intracranial injuries from falls, and one experienced rhabdomyolysis.

Notwithstanding the frequency of adverse effects, severe consequences have been observed following the use of EDWs.



While the nature of a case report does not necessarily allow the establishment of a final causal relationship, the reviewed reports document the following serious consequences of EDW exposure: loss of vision, permanent damage to brain tissue, severe burns requiring skin grafting, incapacitating damage to nerves and tendons, potentially fatal conditions like pneumothorax and renal failure, and even death.

In addition, it needs to be remembered that what is reported in the case studies are mostly incidents where the EDW was used by trained law enforcement agents. For obvious reasons, no studies have been able to show exactly what the outcome is of the use and misuse of the same tools in a torture context where they may be employed with the intention to cause harm, pain and suffering. It is, however, not difficult to imagine that the same or more severe consequences seen elsewhere can be observed in such a context, for example if a person is subjected to EDW application, maybe even repetitive, leading to contraction of muscles and potential falls. Any consequence described in the results section could potentially occur in the case of excessive and unauthorized EDW use, including torture, as well.

Two other topics merit attention in relation to EDWs in the context of torture or ill-treatment: Pain and suffering. There is a glaring absence of descriptions of pain in the case studies described, but it does not take much imagination to envision the pain persons subjected to EDW discharge must feel at the moment of unwillful muscle contraction and electric discharge. Two persons who experienced an EDW discharge as part of certification of training have described the pain as follows (Quora, 2019):

“...getting hit with a metal baseball bat, then an intense tension muscle cramp while being stabbed repeatedly with a pitchfork.”

“The Taser, oh, good Lord; I dropped like a pole-axed mule! EVERY muscle in my body clenched and felt like the worst Charlie horse one could possibly imagine. While the pain was fairly short lived, had I been a perp I would have likely done ANYTHING to avoid a repeat.”

There is also a near-total absence in the case series of descriptions of mental suffering following EDW discharge. Nevertheless, one police officer hit accidentally reported depressed and anxious mood seven months post-incident, and another person reported anxiety, difficulties in concentrating and irritability (Bui et al., 2009; Le Blanc-Louvry et al., 2012). If an EDW is used with the intention to elicit intense fear and pain in the context of torture, it is to be expected that it may lead to anxi-

ety, depression and even post-traumatic stress disorder (PTSD) as documented for other torture methods.

### Limitations

Our review was limited by a number of factors. Case studies may have been missed in our search if they did not include the term *case study/report/series* as key word or in the title or abstract. We employed only two search engines and focused on the adverse health effects on adults. Our review does not include a comparative analysis between the effects of contact (such as stun gun) versus projectile (such as Taser) application since reviewed studies did not consistently specify the EDW used or the model. This is further complicated by the fact that Tasers can be employed both by direct contact and via projectile use. Finally, given the nature of this review, statistical associations and frequency cannot be generated and causal relationships cannot be inferred. Case reports are inherently not generalizable and are prone to selection bias.

### Conclusions and outlook

Our review aimed to consolidate information from case studies on the range of adverse health outcomes due to the use of EDWs since to our knowledge such a comprehensive overview does not currently exist. The reviewed case reports document cases of loss of vision, permanent damage to brain tissue, severe burns requiring skin grafting, incapacitating damage to nerves and tendons, potentially fatal conditions like pneumothorax and renal failure, and even death following exposure to an EDW. In compiling the range of adverse effects of EDWs one is reminded of the effects of electric torture, the second most common form of torture globally (Liu et al., 2021; Milewski et al., 2023).

EDWs such as Tasers are designed for application on physically and mentally fit persons (Axon Enterprise, Inc., 2018). In reality, it is almost impossible for law enforcement officers to establish this prior to application. Our review of case reports demonstrates that EDWs have led to physical suffering. We posit that EDWs may also result in mental pain and suffering.

As more States adopt EDWs as a means of law enforcement, it is imperative that 1) clinicians assessing patients and documenting cases where EDWs may have been used, including torture and ill-treatment cases, are aware of the different types of potential injury; 2) more representative and rigorous research is conducted on the effects of EDWs to investigate potential causality to physical and mental suffering; 3) The mere fact that EDWs can do harm and induce pain and suffering should lead to considerations about their availability and use. Advocacy efforts are needed to spark discussions among decision-makers about this important topic, including pos-

sible enforcement of obligations to update protocols of use and to publicize potential adverse physical and mental health effects. This includes not only law enforcement but also the general availability in society of these potentially harmful and certainly painful weapons.

### References

- Abada, H., Aktouf, A., Delaunay, F., Lievain, L., & Auquit-Auckbur, I. (2014). Alopecia reconstruction by expansion after a scalp burn injury caused by Taser(R): A case report. *Annales de dermatologie et de venerologie*, *141*(12), 769–772. <https://doi.org/10.1016/j.annder.2014.06.012>
- Abdelaty, M., Kandil, M. A., & Walsh, K. (n.d.). Bone-Penetrating TASER Bolt: A Rare Case of Penetrating Injury to the Middle Phalanx of the Little Finger. *Cureus*, *13*(11), e19461. <https://doi.org/10.7759/cureus.19461>
- Al-Jarabah, M., Coulston, J., & Hewin, D. (2008). Pharyngeal perforation secondary to electrical shock from a Taser gun. *Emergency Medicine Journal : EMJ*. <https://doi.org/10.1136/emj.2007.056416>
- Anders, S., Junge, M., Schulz, F., & Puschel, K. (2003). Cutaneous current marks due to a stun gun injury. *J Forensic Sci*, *48*(3), 640–642.
- Axon Enterprise, Inc. (2018). *TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement*. file:///C:/Users/ma/Downloads/V22%20TASER%20Handheld%20CEW%20Law%20Enforcement%20Warnings.pdf
- Axon Law Enforcement*. (2024). <https://www.axon.com/industries/law-enforcement>
- Baldwin, D. E., Nagarakanti, R., Hardy, S. P., Jain, N., Borne, D. M., England, A. R., Nix, E. D., Daniels, C. L., Abide, W. P., & Glancy, D. L. (2010). Myocardial infarction after taser exposure. *The Journal of the Louisiana State Medical Society : Official Organ of the Louisiana State Medical Society*, *162*(5), 291–292, 294–295.
- Baliatsas, C., Gerbecks, J., Dückers, M. L. A., & Yzermans, C. J. (2021). Human Health Risks of Conducted Electrical Weapon Exposure: A Systematic Review. *JAMA Network Open*, *4*(2), e2037209. <https://doi.org/10.1001/jamanetworkopen.2020.37209>
- Becour, B. (2013). Conducted Electrical Weapons or Stun Guns: A review of 46 cases examined in casualty. *The American Journal of Forensic Medicine and Pathology*, *34*(2), 142–146. <https://doi.org/10.1097/PAF.0b013e31828873d6>
- Belen, E., Tipi, F. F., Bayyigit, A., & Helvacı, A. S. (2015). Acute inferior myocardial infarction after electrical weapon exposure: Case report and review of the literature. *Türk Kardiyol Dern Ars*, *43*(2), 178–181. <https://doi.org/10.5543/tkda.2015.79328>
- Bell, N., Moon, M., & Dross, P. (2013). Cerebrovascular accident (CVA) in association with a Taser-induced electrical injury. *Emergency Radiology*, *21*(2), 211–213. <https://doi.org/10.1007/s10140-013-1180-2>
- Ben Ahmed, H., Bouzouita, K., Selmi, K., Chelli, M., Mokaddem, A., Ben Ameer, Y., & Boujnah, M. (2013). Myocardial infarction after conducted electrical weapon shock. *Ann. Cardiol. Angeiol.*, *62*(2), 124–126. <https://doi.org/10.1016/j.ancard.2012.03.006>
- Bonnan, M., Zerbib, J. L., Barroso, B., Puvilland, L. M., Demasles, S., Marasescu, R., & Krim, E. (2019). Acute brachial plexus lesion complicating a stun-gun assault. *Revue Neurologique*, *175*(1–2), 87–88. <https://doi.org/10.1016/j.neurol.2018.01.374>
- Bozeman, W. P., Hauda, W. E., Heck, J. J., Graham, D. D., Martin, B. P., & Winslow, J. E. (2009). Safety and injury profile of conducted electrical weapons used by law enforcement officers against criminal suspects. *Annals of Emergency Medicine*, *53*(4), 480–489. <https://doi.org/10.1016/j.annemergmed.2008.11.021>
- Bui, Sourkes, & Wennberg. (2009). Generalized tonic-clonic seizure after a taser shot to the head. *CMAJ*, *180*(6), 625–626.
- Burdett-Smith, P. (1997). Stun gun injury. *Emergency Medicine Journal*, *14*(6), 402–404. <https://doi.org/10.1136/emj.14.6.402>
- Burmatov, A. P., Bernatskikh, T. K., Zoroastrov, O. M., Lotter, M. G., Burmatov, N. A., & Zoroastrov, M. O. (2011). Marks on the human and animal skin after contact with an electrical discharge device. *Sudebno-meditsinskaia ekspertiza*, *54*(6), 41–43.
- Campbell, F., & Clark, S. (2019). Penetrating facial trauma from a Taser barb. *The British Journal of Oral & Maxillofacial Surgery*, *57*(2), 188–189. <https://doi.org/10.1016/j.bjoms.2018.12.009>
- Cao, M., Shinbane, J. S., Gillberg, J. M., & Saxon, L. A. (2007). Taser-induced rapid ventricular myocardial capture demonstrated by pacemaker intracardiac electrograms. *J Cardiovasc Electrophysiol*, *18*(8), 876–879. <http://dx.doi.org/10.1111/j.1540-8167.2007.00881.x>
- Chandler, J., Martin, B. P., & Graham, D. D. (2013). TASER(R) injury to the forehead. *J Emerg Med*, *44*(1), e67-8. <https://doi.org/10.1016/j.jemermed.2011.06.009>
- Cheek, S., Shifflette, V., & Dunn, E. (2013). Foreign Body Removal: A Shocking Story. *The American Surgeon*, *79*(1), 35–36. <https://doi.org/10.1177/000313481307900119>
- Chen, S. L., Richard, C. K., Murthy, R. C., & Lauer, A. K. (2006). Perforating ocular injury by Taser. *Clin Exp Ophthalmol*, *34*(4), 378–380. <https://doi.org/10.1111/j.1442-9071.2006.01228.x>
- Coad, F., & Maw, G. (2014). TASERed during training: An unusual scapular fracture. *Australasian College for Emergency Medicine and Australasian Society for Emergency Medicine*, 206–207. <https://doi.org/10.1111/1742-6723.12206>
- Council Of Europe. (2013). *Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 6 May 2011* (CPT/Inf (2013) 1).
- Council Of Europe. (2015). *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014* (CPT/Inf (2015) 12).
- Crawley, K., Taylor, R., & Sandhu, A. (2023). Frontal Sinus Injury Secondary to TASER Dart: A Narrative Review. *Journal of Maxillofacial and Oral Surgery*, *22*(3), 666–668. <https://doi.org/10.1007/s12663-022-01790-7>
- De Courcay, C., & Jones, M. A. (2021). Taser barb penetration causing phalangeal fracture. *BMJ Case Reports*, *14*(5), e240953. <https://doi.org/10.1136/bcr-2020-240953>
- de Runz, A., Minetti, C., Brix, M., & Simon, E. (2014). New TASER injuries: Lacrimal canaliculus laceration and ethmoid

- bone fracture. *Int J Oral Maxillofac Surg*, 43(6), 722–724. <https://doi.org/10.1016/j.ijom.2013.12.006>
- Dearing, M., & Lewis, T. J. (2005). Foreign body lodged in distal phalanx of left index finger-taser dart. *Emerg Radiol*, 11(6), 364–365. <https://doi.org/10.1007/s10140-005-0428-x>
- DeepL SE. (n.d.). *DeepL Translator*. Retrieved April 3, 2024, from <https://www.deepl.com/translator>
- Delavar, B., & Thompson, M. A. (2021). Penetrating Intracranial Taser Injury. *The Journal of Emergency Medicine*, 61(5), 590–591. <https://doi.org/10.1016/j.jemermed.2021.07.071>
- Dunet, B., Erbland, A., Abi-Chahla, M. L., Tournier, C., & Fabre, T. (2015). The TASERed finger: A new entity. Case report and review of literature. *Chir Main*, 34(3), 145–148. <https://doi.org/10.1016/j.main.2015.04.001>
- England, J., Brown, W., & Dearn, J. (2015). Sudden cardiac arrest associated with application of shocks from a TASER Electronic Control Device. *Heart Lung and Circulation*, 24(SUPPL. 3), S230. <http://dx.doi.org/10.1016/j.hlc.2015.06.284>
- European Council. (2011, December 21). *Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, CELEX1* [Website]. <https://publications.europa.eu/en/publication-detail/-/publication/e7749622-48ca-4339-a7e0-92b363c975cb/language-en>
- Feeney, C., Vu, J., & Ani, C. (2010). Acute Agitated Delirious State Associated With Taser Exposure. *Journal of the National Medical Association*, 102(12), 1254–1257.
- Gapsis, B. C., Hoang, A., Nazari, K., & Morcos, M. (2017). Ocular manifestations of TASER-induced trauma. *Trauma Case Rep*, 12, 4–7. <https://doi.org/10.1016/j.tcr.2017.10.001>
- Gardner, A. R., Hauda, W. E., & Bozeman, W. P. (2012). Conducted electrical weapon (TASER) use against minors: A shocking analysis. *Pediatric Emergency Care*, 28(9), 873–877. <https://doi.org/10.1097/PEC.0b013e31826763d1>
- Giaconi, J., Ries, M., & Steinbach, L. (2011). Stun gun induced myotendinous injury of the iliopsoas and gluteus minimus. *Journal of the International Skeletal Society A Journal of Radiology, Pathology and Orthopedics*, 40(6), 783–787. <https://doi.org/10.1007/s00256-011-1105-7>
- Gleason, J. B., & Ahmad, I. (2015). TASER® Electronic Control Device-Induced Rhabdomyolysis and Renal Failure: A Case Report. *Journal of Clinical and Diagnostic Research : JCDR*, 9(10), HD01–HD02. <https://doi.org/10.7860/JCDR/2015/15465.6608>
- Gross, E., Porterieko, J., & Joseph, D. (2013). *Rhabdomyolysis and Oliguric Renal Failure after Use of TASER: Is It Really Safe?* (Vol. 79).
- Haegeli, L. M., Sterns, L. D., Adam, D. C., & Leather, R. A. (2006). Effect of a Taser shot to the chest of a patient with an implantable defibrillator. *Heart Rhythm*, 3(3), 339–341. <http://dx.doi.org/10.1016/j.hrthm.2005.12.012>
- Han, J. S., Chopra, A., & Carr, D. (2009). Ophthalmic injuries from a TASER. *CJEM*, 11(01), 90–93. <https://doi.org/10.1017/S1481803500010976>
- Hinchey, P. R., & Subramaniam, G. (2009). Pneumothorax as a complication after TASER activation. *Prehospital Emergency Care : Official Journal of the National Association of EMS Physicians and the National Association of State EMS Directors*, 13(4), 532–535. <https://doi.org/10.1080/10903120903144890>
- Holder, E. H., Robinson, L. O., Laub, J. H., & MacDonald, J. (2011). *Police use of force: Tasers and other less-lethal weapons*. National Institute of Justice. <http://dx.doi.org/10.13140/RG.2.1.5100.4647>
- Hudak, L. A., Marti, J. J., & Houry, D. E. (2011). Bilateral patellar tendon rupture after stun gun shock. *Injury Extra*, 42(11), 186–188. <https://doi.org/10.1016/j.injury.2011.06.421>
- Jenkinson, E., Neeson, C., & Bleetman, A. (2006). The relative risk of police use-of-force options: Evaluating the potential for deployment of electronic weaponry. *J Clin Forensic Med*, 13(5), 229–241. <https://doi.org/10.1016/j.jcfm.2005.11.006>
- Jey, A., Hull, P., Kravchuk, V., Carillo, B., & Martel, J. B. (2016). Emergent diagnosis and management of TASER penetrating ocular injury. *The American Journal of Emergency Medicine*, 34(8), 1740.e3–1740.e5. <https://doi.org/10.1016/j.ajem.2016.01.005>
- Kim, P. J., & Franklin, W. H. (2005). Ventricular Fibrillation after Stun-Gun Discharge. *The New England Journal of Medicine*, 353(9), 958–959. <https://doi.org/10.1056/NEJMc051625>
- Koscove, E. M. (1987). Taser® dart ingestion. *The Journal of Emergency Medicine*, 5(6), 493–498. [https://doi.org/10.1016/0736-4679\(87\)90212-5](https://doi.org/10.1016/0736-4679(87)90212-5)
- Kroll, M. W., Adamec, J., Wetli, C. V., & Williams, H. E. (2016). Fatal traumatic brain injury with electrical weapon falls. *J Forensic Leg Med*, 43, 12–19. <https://doi.org/10.1016/j.jflm.2016.07.001>
- Kroll, M. W., Lakkireddy, D. R., Stone, J. R., & Luceri, R. M. (2014). TASER Electronic Control Devices and Cardiac Arrests: Coincidental or Causal? *Circulation*, 129(1), 93–100. <https://doi.org/10.1161/CIRCULATIONAHA.113.004401>
- Kroll, M. W., Ritter, M. B., & Williams, H. E. (2017). Fatal and non-fatal burn injuries with electrical weapons and explosive fumes. *J Forensic Leg Med*, 50, 6–11. <https://doi.org/10.1016/j.jflm.2017.06.001>
- Kunz, S., Ho, J., Dawes, D., & Knack, S. (2024). Effectiveness of a New-Generation CEW in Human Subjects with a Goal-Directed Task. *Human Factors and Mechanical Engineering for Defense and Safety*, 8. <https://doi.org/10.1007/s41314-024-00066-x>
- Le Blanc-Louvry, I., Gricourt, C., Touré, E., Papin, F., Proust, B., Le Blanc-Louvry, I., Gricourt, C., Touré, E., Papin, F., & Proust, B. (2012). A brain penetration after Taser injury: Controversies regarding Taser gun safety. *Forensic Sci Int*, 221(1–3), e7–11. <https://doi.org/10.1016/j.forsciint.2012.03.027>
- Lee, B. K., Vittinghoff, E., Whiteman, D., Park, M., Lau, L. L., & Tseng, Z. H. (2009). Relation of Taser (electrical stun gun) deployment to increase in in-custody sudden deaths. *The American Journal of Cardiology*, 103(6), 877–880. <https://doi.org/10.1016/j.amjcard.2008.11.046>
- Lewis, M. C., & Lewis, D. E. (2016). Frontal Sinus TASER Dart Injury. *The Journal of Emergency Medicine*, 50(3), 490–492. <https://doi.org/10.1016/j.jemermed.2015.09.024>
- Li, J. Y., & Hamill, M. B. (2013). Catastrophic Globe Disruption as a Result of a TASER Injury. *The Journal of Emergency Medicine*, 44(1), 65–67. <https://doi.org/10.1016/j.jemermed.2011.03.010>
- Liu, C., Kakalis, M., & Weintraub, J. (2021). *Torture by*

- administration of electric shocks: The case of PG (Vol. 31).
- Lokdam, N., Hincheli, N. L., & Aon, M. (2018). *DIGNITY Fact Sheet Collection, Health #3: Electric Discharge Weapons (EDWs)*. <https://dignity.dk/wp-content/uploads/electric-discharge-weapons-factsheet-english.pdf>
- Maher, P. J., Beck, N., Strote, J., & Med, J. (2015). Pneumomediastinum and pulmonary interstitial emphysema after tracheal taser injury. *Emergency Medicine Journal : EMJ*, 32(1), 90. <https://doi.org/10.1136/emmermed-2013-203160>
- Mangus, B. E., Shen, L. Y., Helmer, S. D., Maher, J., & Smith, R. S. (2008). Taser and Taser associated injuries: A case series. *The American Surgeon*, 74(9), 862–865.
- Mansueto, G., Di Napoli, M., Mascolo, P., Carfora, A., Zangani, P., Pietra, B. D., & Campobasso, C. P. (2021). Electrocutation Stigmas in Organ Damage: The Pathological Marks. *Diagnostics (Basel, Switzerland)*, 11(4), 682. <https://doi.org/10.3390/diagnostics11040682>
- Mehl, L. E. (1992). Electrical injury from taser and miscarriage. *Acta Obstetrica et Gynecologica Scandinavica*. <https://www.tandfonline.com/doi/abs/10.3109/00016349209007967>
- Milewski, A., Weinstein, E., Lurie, J., Lee, A., Taki, F., Pilato, T., Jedlicka, C., & Kaur, G. (2023). Reported Methods, Distributions, and Frequencies of Torture Globally: A Systematic Review and Meta-Analysis. *JAMA Network Open*, 6(10), e2336629. <https://doi.org/10.1001/jamanetworkopen.2023.36629>
- Moysidis, S. N., Koullisis, N., Rodger, D. C., Chao, J. R., Leng, T., de Carlo, T., Burkemper, B., Ediriwickrema, L. S., George, M. S., Jiang, Y., Bohm, K. J., Gulati, S., Torres, R. J., Meallet, M. A., Moshfeghi, A. A., Flynn, H. W., Mieler, W. F., Williams, G. A., Humayun, M. S., & Elliott, D. (2019). Thomas A. Swift's Electric Rifle Injuries to the Eye and Ocular Adnexa: The Management of Complex Trauma. *Ophthalmology. Retina*, 3(3), 258–269. <https://doi.org/10.1016/j.oret.2018.10.005>
- Multerer, S., Berkenbosch, J. W., Das, B., & Johnsrude, C. (2009). Atrial fibrillation after taser exposure in a previously healthy adolescent. *Pediatric Emergency Care*, 25(12), 851–853. <https://doi.org/10.1097/PEC.0b013e3181c399a9>
- Naunheim, R. S., Treaster, M., & Aubin, C. (2010). Ventricular fibrillation in a man shot with a Taser. *Emergency Medicine Journal*, 27(8), 645–646. <https://doi.org/10.1136/emj.2009.088468>
- Ng, W., & Chehade, M. (2005). Taser penetrating ocular injury. *Am J Ophthalmol*, 139(4), 713–715. <https://doi.org/10.1016/j.ajo.2004.11.039>
- NIJ. (2009, August 3). *The Use-of-Force Continuum*. National Institute of Justice. <https://nij.ojp.gov/topics/articles/use-force-continuum>
- Paninski, R. J., Marshall, M. E., & Link, M. S. (2013). ICD Oversensing Caused by TASER. *Journal of Cardiovascular Electrophysiology*, 24(1), 101–101. <https://doi.org/10.1111/jce.12046>
- Plenzig, S., Verhoff, M. A., Gruber, H., & Kunz, S. N. (2021). Aspiration-related pneumonia after Taser exposure – A multiple causations mechanism. *Forensic Science International (Online)*, 326. <https://doi.org/10.1016/j.forsciint.2021.110906>
- Pope, T. D., Japra, N., Shah, A. D., & Lloyd, M. (2023). Real-time monitoring of an implantable cardiac device during taser device discharge. *HeartRhythm Case Reports*, 9(6), 420–422. <https://doi.org/10.1016/j.hrcr.2023.03.020>
- Quora. (2019). *How much does a taser hurt really?* Quora. <https://www.quora.com/How-much-does-a-taser-hurt-really>
- Rafailov, L., Temnigorod, J., Tsai, F. F., & Shinder, R. (2017). Impaled Orbital TASER Probe Injury Requiring Primary Enucleation. *Ophthalmic Plastic & Reconstructive Surgery*, 33(3S), S176–S177. <https://doi.org/10.1097/IOP.0000000000000486>
- Rehman, T. U., Yonas, H., & Marinaro, J. (2007). Intracranial penetration of a TASER dart. *American Journal of Emergency Medicine*, 25(6), 733.e3-4. <https://doi.org/10.1016/j.ajem.2006.12.017>
- Richards, K. A., Kleuser, L. P., & Kluger, J. (2008). Fortuitous therapeutic effect of Taser shock for a patient in atrial fibrillation. *Ann Emerg Med*, 52(6), 686–688. <https://doi.org/10.1016/j.annemergmed.2008.04.023>
- Sanford, J. M., Jacobs, G. J., Roe, E. J., & Terndrup, T. E. (2011). Two patients subdued with a TASER(R) device: Cases and review of complications. *The Journal of Emergency Medicine*, 40(1), 28–32. <https://doi.org/10.1016/j.jemermed.2007.10.059>
- Sayegh, R., Madsen, K., Adler, J., Johnson, M., & Mathews, M. (2011). Diffuse retinal injury from a non-penetrating TASER dart. *The Journal of Clinical Electrophysiology and Vision - The Official Journal of the International Society for Clinical Electrophysiology and Vision*, 123(2), 135–139. <https://doi.org/10.1007/s10633-011-9287-9>
- Schwarz, E. S., Barra, M., & Liao, M. M. (2009). *Successful resuscitation of a patient in asystole after a TASER injury using a hypothermia protocol*. (Vol. 27). <https://doi.org/10.1016/j.ajem.2008.07.042>
- Semple, T., Jenkins, B., & Bennell, C. (2021). *Injuries and deaths proximate to oleoresin capsicum spray deployment: A literature review*. <https://journals-sagepub-com.ezproxy.aub.edu.lb/doi/10.1177/0032258X20926873>
- Seth, R. K., Abedi, G., Daccache, A. J., & Tsai, J. C. (2007). Cataract secondary to electrical shock from a Taser gun. *Journal of Cataract and Refractive Surgery*. <https://doi.org/10.1016/j.jcrs.2007.04.037>
- Sharabura, A. B., Fong, J. W., & Pemberton, J. D. (2021). Ocular TASER Probe Injury Managed with Primary Evisceration: Case Report. *Case Reports in Ophthalmology*, 12(3), 934–939. <https://doi.org/10.1159/000520460>
- Sharma, A., Theivacumar, N. S., & Souka, H. M. (2009). Tasers—Less than lethal! *Ann R Coll Surg Engl*, 91(4), W20-1. <https://doi.org/10.1308/147870809x400958>
- Sheppard, K. G., & Welsh, B. C. (2022). Can police use of less-than-lethal weapons reduce harm during violent police-citizen encounters? A systematic review and directions for future research. *Aggression and Violent Behavior*, 64, 101748. <https://doi.org/10.1016/j.avb.2022.101748>
- Sloane, C. M., Chan, T. C., & Vilke, G. M. (2008). Thoracic Spine Compression Fracture After TASER Activation. *The Journal of Emergency Medicine*, 34(3), 283–285. <http://dx.doi.org/10.1016/j.jemermed.2007.06.034>
- Strote, J., Walsh, M., Angelidis, M., Basta, A., & Hutson, H. R. (2010). Conducted Electrical Weapon Use by Law Enforcement: An Evaluation of Safety and Injury. *The Journal of*

- TRAUMA Injury Infection and Critical Care*, 68(5), 1239–1246. <https://doi.org/10.1097/TA.0b013e3181b28b78>
- Swerdlow, C. D., Fishbein, M. C., Chaman, L., Lakkireddy, D. R., & Tchou, P. (2009). Presenting rhythm in sudden deaths temporally proximate to discharge of TASER conducted electrical weapons. *Acad Emerg Med*, 16(8), 726–739. <https://doi.org/10.1111/j.1553-2712.2009.00432.x>
- Takats, S., Stillman, D., Cheslack-Postava, F., Bagdonas, M., Jullinek, A., Najdek, T., Petrov, D., Rentka, M., & Venčkauskas, A. (2023). *Zotero (6.0.26) [Windows 10]*. <https://www.zotero.org/> [Computer software]. Corporation for Digital Scholarship.
- Terrill, W., & Paoline, E. A. (2012). Conducted Energy Devices (CEDs) and Citizen Injuries: The Shocking Empirical Reality. *Justice Quarterly*, 29(2), 153–182. <https://doi.org/10.1080/07418825.2010.549834>
- Teymoorian, S., San Filippo, A. N., Poulouse, A. K., & Lyon, D. B. (2010). Perforating globe injury from Taser trauma. *Ophthalmic Plast Reconstr Surg*, 26(4), 306–308. <https://doi.org/10.1097/IOP.0b013e3181c15c36>
- Theisen, K., Slater, R., & Hale, N. (2016). Taser-Related Testicular Trauma. *Urology*, 88, e5. <https://doi.org/10.1016/j.urology.2015.11.011>
- Tyagi, A., Gill, A., & Felton, B. (2017). Thoracic Compression Fracture as a Result of Taser® Discharge. *Clinical Practice and Cases in Emergency Medicine*, 1(4), 319–322. <https://doi.org/10.5811/cpcem.2017.7.33508>
- UNCAT. (2008). *Conclusions and recommendations of the United Nations Committee against Torture: Portugal (CAT/C/PRT/CO/4)*. <https://www.refworld.org/docid/4804a62e.html>
- UNCAT. (2018). *Concluding observations on the seventh periodic report of the Netherlands adopted by the United Nations Committee against Torture at its sixty-fifth session (12 November-7 December 2018)*. <https://documents.un.org/doc/undoc/gen/g18/442/89/pdf/g1844289.pdf?token=H6z7MrHMmGPFFIZpl3&fe=true>
- Wikipedia. (2024). Tom Swift and His Electric Rifle. In *Wikipedia*. [https://en.wikipedia.org/w/index.php?title=Tom\\_Swift\\_and\\_His\\_Electric\\_Rifle&oldid=1210275379](https://en.wikipedia.org/w/index.php?title=Tom_Swift_and_His_Electric_Rifle&oldid=1210275379)
- Willoughby, L., Peyton, K., Gorgas, D., & Li-Sauerwine, S. (2022). Leveraging Resources to Remove a Taser Barb Embedded in Bone: Case Report. *Clinical Practice and Cases in Emergency Medicine*, 6(1), 41–43. <https://doi.org/10.5811/cpcem.2021.10.54196>
- Winslow, J. E., Bozeman, W. P., Fortner, M. C., & Alson, R. L. (2007). Thoracic Compression Fractures as a Result of Shock From a Conducted Energy Weapon: A Case Report. *Annals of Emergency Medicine*, 50(5), 584–586. <https://doi.org/10.1016/j.annemergmed.2007.06.008>
- Zipes, D. P. (2013). *Response to Letters Regarding Article, “Sudden Cardiac Arrest and Death Following Application of Shocks From a TASER Electronic Control Device” (Vol. 127)*. <https://doi.org/10.1161/CIRCULATIONAHA.112.147520>

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# Protests and use of rubber bullets in South Africa: Unspoken pain and trauma of eye injuries

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## Key points of interest

- There is no reliable documentation of fatal or non-fatal rubber bullet injuries in South Africa
- The use of rubber bullets by police during public protests results in large numbers of eye injuries for both protestors and civilians.
- There is an urgent need to provide essential services and support for people impacted by this form of violence.

## Abstract:

*Introduction:* The article examines the experiences of protesters and bystanders who have sustained eye injuries from rubber bullets fired by the police. Use of rubber bullets by police officers during public protests is officially regulated, but there is insufficient documentation about the nature of fatal and non-fatal injuries linked to rubber bullet use during protests in South Africa. *Methods:* We present three case studies based on data gathered from student protests, community protests, and media reports. Through the analysis of these sources, the article presents the personal stories of individuals who have experienced eye injuries, detailing how the incidents occurred and the subsequent impact on their lives. It also examines the accessibility of medical, psychological, and legal services available to victims in addressing the consequences of these injuries. *Results:* The cases studies illustrate that rubber bullets were used frequently and often without due caution by police officers during the events examined. The use of rubber bullets was linked to numerous eye injuries, resulting in lasting psychological and physical consequences for those affected. *Discussion:* Rubber bullet-related eye injuries during protests are disturbingly common in South Africa. Consequently, there is an urgent need to provide essential services and support to those who suffer from these life-altering incidents.

**Keywords:** Eye injuries, rubber bullets, trauma, police, and protests

## Introduction: South Africa is a protest nation.

Protests in South Africa have a long history, dating back to the apartheid era when police frequently used live ammunition to disperse protesters (Lodge, 2011). The transition to democracy in 1994 brought hope for a new era of respect for human rights,

including the right to assemble and protest, which is enshrined in the Bill of Rights (section 17) (Chamberlain, 2016; De Vos, 2018; Klaasen, 2020). However, despite the advent of democracy, South Africa has continued to experience violent responses by the police to protests (Duncan, 2016; Lancaster, 2016). Accurate data

collection on protests in the country is challenging due to the absence of a formal recording system, leading researchers to rely on potentially biased media reports that may disproportionately cover violent events (Duncan, 2016; Lancaster, 2016). Despite these limitations, protests are a prevalent form of expression in South Africa. This has led some observers to label the country as the 'protest capital of the world' or a 'protest nation' (Duncan, 2016; Richardson et al., 2022). These protests are driven by a range of factors, including failure to deliver services such as water, electricity, education, health care, and housing, as well as allegations of corruption, maladministration, incompetence, and nepotism against government officials (Alexander, 2010; Booysen, 2007; De Visser and Powell, 2012). While many studies have examined the causes and drivers of these protests, fewer (Bruce, 2019; Richardson et al., 2022) have focused on the injuries resulting from police use of rubber bullets and the remedies, both legal and medical, available to those injured. Dating back to roughly 2009, there are accounts of persons killed or injured from the use of rubber bullets, by members of the South African Police Service (SAPS), which included incidents of eye injury and the permanent loss of an eye (Bruce, 2012). However, there is no reliable documentation or statistics of either fatal or non-fatal rubber bullet related injuries in South Africa. Any attempt to analyse the prevalence of rubber bullet related deaths and injuries involves drawing inferences from other data (Bruce, 2012).

This article seeks to explore the injuries suffered by students who participated in protests at the University of Witwatersrand (popularly known as Wits University), community protest in the community of Kwaggafontein and other cases reported in the media, as well as the assistance provided to those injured.

#### *Use of less-lethal weapons by the South African Police Service*

The utilization of less-lethal weapons (LLW) by law enforcement has significantly evolved throughout history, particularly with advancements in technology that have reshaped the methods of using force in policing (Stander, 2013). These weapons are increasingly employed by law enforcement agencies worldwide in response to protests, primarily due to the perception that they mitigate issues related to police use of force (Rappert, 2007).

Rappert (2007) suggests that the acceptable levels of force are intertwined with the authority and legitimacy of police forces within a society, especially in liberal democracies. This perspective is particularly relevant in the current South African context. Despite their intended purpose, there is limited information on the appropriate use of LLWs, including their potential for misuse and negative health impacts.

Contrary to the notion that LLWs are harmless, evidence indicates that their deployment in various protests worldwide

has frequently resulted in injury, disability, and even death (INCLO, 2016).

This paper explores the utilization of kinetic impact projectiles (KIPs), commonly referred to as rubber bullets, in crowd control situations globally. As a type of less-lethal weapon (LLW), KIPs possess distinct characteristics compared to traditional bullets. Their tumbling movement results in reduced speed, decreasing the risk of penetrating injuries but compromising accuracy (INCLO, 2016). Consequently, KIPs may be potentially lethal when used at close range and indiscriminate and inaccurate at longer ranges.

The Use of Force Guidelines advises that KIPs should only be employed for controlling individual force and not against groups of people (INCLO, 2016). However, there is substantial evidence indicating that these guidelines are often violated, with instances of KIPs being fired at the upper body or face, discharged from dangerously close distances, and indiscriminately targeted at crowds.

When rubber bullets are used by the SAPS, this generally refers to Public Order Policing (POP) units who are mandated to respond to protests as well as other incidents involving 'crowd management' and who are armed with various LLWs. Rubber bullets are not only used by SAPS POP personnel. Notably during the early stages of the Covid-19 related lockdown, which started on 27 March 2020, they were used by other members of SAPS for the purpose of enforcing the lockdown. Some metropolitan police services have also established public order units, and these are equipped with shotguns that fire rubber bullets. According to the SAPS guidelines, the use of force must be lawful, necessary, and proportional, with the goal of restoring order rather than causing harm. However, there have been numerous reports of injuries caused by police during protests, raising concerns about whether these guidelines are being followed or not (Madima, Rakhubu, & Tirivangasi, 2022; Richardson et al., 2022). Police data related to a 2013 protest outside Johannesburg, indicated that 1 100 rubber rounds were fired (Bruce, 2016). The Gauteng Provincial Commissioner stated that 16,971 shotgun rounds were fired by SAPS members in Gauteng during the July 2021 unrest (Smith, 2018). One highly publicized case is that of Andries Tatane, who was shot in the chest with rubber bullets and killed during a service delivery protest in Ficksburg, Free State, on April 13, 2011. This incident sparked public outrage and calls for a review of the use of rubber bullets during protests.

Following the Tatane incident, new guidelines were developed for the police. These were introduced in National Instruction 4 of 2014, on when and how to use rubber bullets in extreme situations when less forceful methods prove ineffective

or are unavailable. However, these guidelines have not led to a significant reduction in the disproportionate or indiscriminate use of rubber bullets against protesters.

This article presents case examples of injuries suffered by protesting students at Wits University, community members in Kwaggafontein and other communities across South Africa due to rubber bullets fired by the police. These injuries have resulted in both physical and psychological consequences. It is apparent from these case studies that many of the victims have a legal claim for compensation for the pain and suffering they endured, but accessing such justice in South Africa can be challenging due to a lack of established systems and processes.

### Case studies

#### *Case study 1: #FeesMustfall protest at the University of Witwatersrand (known as Wits University)*

In 2015/2016, student-led protests against rising tuition fees gained momentum and spread across universities in the country (Langa, 2017). The #FeesMustFall movement sparked debates about the affordability of higher education and led to additional demands from students for decolonization of the educational system, greater diversity among staff, and improved working conditions for general workers (Langa, 2017; Maringira et al, 2022). Initially, the protests were peaceful and received support from academics and other stakeholders. The central message was that tuition costs were too high and posed a barrier to access for many Black students from low-income backgrounds. The #FeesMustFall movement garnered widespread support, but the situation escalated when protests turned violent, and police were called in to maintain order on university campuses (Ndlovu, 2017).

According to a report *A double harm: police misuse of force and barriers to necessary health care services* by Rayner, Baldwin-Ragaven, and Naidoo (2017), in September 2016, the management of Wits University, citing a High Court Order, requested the deployment of police to manage new waves of protests on campus. This led to incidents of police using unjustified force against protesting students and bystanders presented below, resulting in physical injuries and emotional trauma as well as eye injuries and loss of sight as documented in the *Double Harm* report (Rayner, Baldwin-Ragaven, and Naidoo, 2017).

A priest who worked at Trinity Catholic Church (situated next to the university) where some protesting students had taken refuge was shot by rubber bullets in his lower legs while negotiating with the police to stop violence. The priest at that time did not consider that he was specifically targeted in that incident. Following this incident while

sitting at the gate of the church, the priest was shot again. He recalled seeing 'thin gun barrels sticking out of the right side of the police vehicle and pointing straight at him. He was hit in his face. He felt stunned and pain. He was helped away by students. He was bleeding profusely and taken to the nearest hospital. This incident was covered extensively in the media, especially his white clerical collar that was soaked with blood. Soon after this incident, the priest mentioned that the Police National Commissioner accompanied by a small delegation, visited him at his home and apologized for what had happened and promised that an official investigation into the incident shall be instituted but to date nothing has happened and investigators had not come back to him.

On the same date, another student was shot in her right eye with a rubber bullet. The tissue in her eye had ruptured. She was bleeding and was not able to close her upper eyelid. She was later taken to the hospital after waiting for the ambulance for many hours. She was taken to a private hospital for medical assistance but as she did not have medical insurance and she was taken to a public hospital.

An office cleaner who was walking in the area near where student protests were taking place was shot in the eye with a rubber bullet and, as a result, suffered permanent loss of eyesight in his right eye (Rayner, Baldwin-Ragaven, and Naidoo, 2017).

The above documented incidents underscore the serious health implications of rubber bullet use, notably eye injuries. The Socio-Economic Rights Institute (SERI), a non-governmental human rights organization, commissioned the *Double Harm* report to raise public awareness about the unjust, unfair, and disproportionate use of force by police against protesting students. Drawing attention to these injuries helps address the data gap surrounding the negative health consequences of rubber bullets and advocate for more appropriate measures to maintain order during protests while safeguarding the health and well-being of the protestors.

*Case study 2: Kwaggafontein community protest in Mpumalanga* Kwaggafontein is a small semi-urban area located in Mpumalanga Province, with an estimated population of 2,000. The community is characterized by high levels of poverty and unemployment, and residents have faced significant challenges in accessing clean water. According to media reports, on April 15, 2019, community members organized a public march to demand the provision of water, which they had been lacking for up to two years. Prior to the protest, residents claimed that they



had alerted local and provincial authorities about the dire situation, but no action had been taken. The protesters blocked the main road leading to the community, disrupting traffic and preventing residents from going to work or school.

In response to the protests, the police were called in, and reportedly began firing rubber bullets indiscriminately at protesters and bystanders. In retaliation, community members started throwing stones at the police and engaging in acts of vandalism, looting shops owned by foreign nationals and setting fire to government offices. According to media reports, 38 people were arrested that day, and numerous individuals suffered eye injuries due to rubber bullets as described below.

On April 15, 2019, Martin (pseudonym) was traveling from Kwa Mhlanga, Suncity Village, to his parental home. Due to a blockade, the vehicle he was traveling in could not reach his parental home. This obstruction prevented various forms of transportation, including taxis, buses, and private vehicles, from accessing the area. Passengers, including Martin, were dropped off at, about two kilometers from his parental home and had to walk the remaining distance. Martin joined a group of people who were also walking toward his home.

As Martin and a few other individuals approached the police to explain that they were not part of the protest group, the officers began shooting at them. Martin was hit on the right side of his leg, just below the knee, as he tried to run away. The police continued to fire shots indiscriminately at the people around the four-way stop, causing widespread panic and chaos. Martin managed to find cover under a bridge, but two police officers cornered him and continued shooting until they ran out of ammunition. He was struck by several bullets, one of which hit his left eye.

Despite his serious injuries and pleas for medical assistance, Martin was unlawfully arrested and loaded into a truck. He endured severe pain for over 30 minutes without receiving any medical treatment. Shockingly, one police officer was quoted as saying, "Let him die".

The arrested individuals, including Martin, were transported to the Kwaggafontein police station and taken to the charge office. Martin was instructed to go to the clinic for medical treatment. He requested that the truck driver, who was returning to the four-way stop, give him a ride to the clinic. However, his request was denied, and he was told to "walk there". Fortunately, a member of the public offered assistance and escorted Martin to an ambulance stationed on the police premises. From there, he was taken to Philadelphia Hospital for further treatment. Upon arrival at

the hospital, Martin was handcuffed to the bed and placed under police guard for four days. On the fourth day, he was released after being informed that his bail had been paid. Since then, Martin has been unable to afford consultations with eye specialists, and his vision remains impaired due to the eye injury he sustained during the incident.

Velaphi (pseudonym) left home to purchase electricity on the morning of April 15 at around 9:00 AM. He entered the shop, and shortly after, protesters rushed in, followed by police officers who were shooting indiscriminately at everyone present. Velaphi was shot in the eye during the chaos. He attempted to seek medical attention at a nearby clinic, but it was closed due to the ongoing protest. The next day, on April 16, 2019, he went to Kwa Mhlanga Hospital, where he was scheduled for a follow-up appointment on April 25, 2019.

As a result of the injury, Velaphi has suffered permanent damage to his left eye, significantly affecting his vision. This has caused him considerable distress and made his daily life more challenging. He believes that his injury could have been avoided, as he was not participating in the protest. The persistent reminder of his injured eye has led to feelings of depression.

Several individuals who were injured during the protests, including Martin and Velaphi, have filed civil claims against the police. However, at the time of writing this article, their cases have not yet started due to the length of the legal process required to launch civil claims against the police. Pursuing civil claims against the police can be a complicated and lengthy process, presenting significant challenges for plaintiffs seeking justice for their injuries. As part of the legal process, victims must consult with various professionals to assess the physical and psychological impacts of their experiences. For instance, psychological assessments are required to evaluate symptoms of PTSD, depression, and anxiety for a claim of emotional shock. In cases involving physical injuries, such as eye injuries, specialized medical professionals like ophthalmologists are needed to provide expert assessments. However, accessing these necessary services can be a major obstacle for many victims, particularly those who are indigent or lack the financial resources to cover the costs of professional services and legal fees. While some professionals may offer their services pro bono, this assistance is often limited and insufficient to address the needs of all victims. Currently, there is an urgent need for victims to access to legal and medical services to effectively pursue justice in civil claims against the police (Langa, 2014).

*Case study 3: Other documented cases of eye injuries and loss of eyesight*

Several significant cases of eye injuries and vision loss have been reported in the media.

Some notable examples include:

The case of Sivuyisiwe Dyani, who lost sight in both eyes after being struck by rubber bullets fired by police during protests in Hermanus, Western Cape, in 2017. On July 17, 2018, Dyani heard a commotion outside his home in Zwelihle and went to investigate. He witnessed police shooting at protesters who were running up the road, and he was hit by a rubber bullet, resulting in immediate vision loss. A neighbor arranged for private transportation to Hermanus Provincial Hospital, and the following day, Dyani was transferred to Tygerberg Hospital for surgery. He filed a complaint with the Independent Police Investigative Directorate (IPID), but as of 2020, there had been no progress in his case (Washinyira, 2020)

Siyasanga Gijana, a resident of the Ramaphosa informal settlement in Philippi, Cape Town, lost her right eye in April 2020, a month after the COVID-19 lockdown was declared. She was shot by police officers while inside her yard. Nearly seven months later, no arrests had been made, and the Independent Police Investigative Directorate (IPID) was still investigating the case. Gijana recounted that around 7:30 pm on April 23, she was outside her shack fetching water when she heard gunshots. She was unaware that she had been shot until she noticed blood coming from her eye. Her neighbor rushed her to a clinic, and she was then referred to Groote Schuur Hospital, where doctors informed her that her eye could not be saved. Gijana filed a complaint with the police station and IPID, but as of the report in 2020, she had not received any updates on her case, despite her attempts to follow up (Nocuze, 2020).

The July unrest in South Africa refers to the violent riots and protests that erupted in 2021 following the arrest of former President Jacob Zuma for contempt of court. In response to Zuma's arrest, individuals in Gauteng and Kwa-Zulu-Natal engaged in widespread looting and destruction of property, prompting police to use rubber bullets in an attempt to disperse the crowds. A press report highlighted the impact of rubber bullet injuries during the July 2021 unrest, focusing on cases treated at a Johannesburg Clinic.

According to the report, a doctor mentioned that during a single shift, they had treated between 20 and 30 patients with rubber bullet injuries, including two cases that resulted in the loss of an eye (Smillie, 2021).

Multiple media reports corroborate the findings in this article that rubber bullet-related eye injuries are a frequent occurrence during South African protests. Despite the lack of a comprehensive data collection system, these media reports also show how excessive force by police often result in various types of injuries.

**Discussion of the key findings:**

These case studies, taken in conjunction with the work of Lancaster (2016), show that protests are common in South Africa, often stemming from demands for basic human rights such as affordable education and access to clean water. In many cases, protests are not the first course of action for individuals (Langa & von Holdt, 2012). Rather, they are often seen as a last resort when communities feel that their concerns have not been addressed through democratic processes like consulting with local government or other relevant institutions. Research suggests that peaceful protests are often held without receiving media coverage (Duncan, 2016), and it appears that the government may be more likely to respond when protests are highly visible and disruptive.

Von Holdt (2014) has characterised South Africa's democracy as violent with a tendency for the state to respond to protests with repressive measures, rather than addressing the underlying issues that lead to discontent. This use of state violence is often seen as a means of delegitimizing protesters and their demands. The case studies presented here highlight the fact that protesters and bystanders can suffer serious eye injuries and long-lasting psychological effects from the use of rubber bullets, and that access to medical, psychosocial, and legal services is not readily available. These consequences are often overlooked or ignored, leaving the victims without the support they need to heal and seek justice.

*Access to health facilities*

The protesters and bystanders who were injured after being shot by the police required urgent medical attention, but unfortunately, the public healthcare system in South Africa is already strained due to the high demand for services related to HIV, diabetes, hypertension, and other health conditions (Achoki et al., 2022; Mayosi et al., 2009). Many South Africans rely on public hospitals for medical care, especially those who do not have access to private medical aid. In the case studies presented here, it

was evident that the injured individuals required specialist care, particularly from eye specialists.

Unfortunately, accessing specialist care in public hospitals can be challenging due to long waiting lists, which can be as long as a year or more for an appointment. In cases where patients have suffered eye injuries from rubber bullets, a timely response is crucial to prevent permanent blindness. A concerning aspect revealed in this article is that many victims suffering from eye injuries have been unable to access specialized medical care. This lack of proper treatment by ophthalmologists may lead to potentially irreversible damage, resulting in long-lasting vision impairment, which means this lack of access must be addressed urgently.

#### *Access to psychosocial services*

Beyond the physical injuries inflicted, the incidents discussed in the case studies had profound psychological implications for the victims. Comprehensive psychological assessments conducted on the patients revealed a prevalence of severe symptoms related to major depression, anxiety, and post-traumatic stress disorder (PTSD). These findings are consistent with other studies that have highlighted the strong link between rubber bullet eye injuries and psychological trauma (Çelebi, Adam-Troian, & Mahfud, 2022). Unfortunately, access to psychological services is limited in South Africa, with many people lacking access due to a lack of resources and geographical barriers (Docrat, Besada & Lund, 2019; Pillay, 2019). These long-lasting effects underscore the need for greater attention to the psychological impact of these incidents and the importance of ensuring access to psychological services for those affected.

During student protests, the Centre for the Study of Violence and Reconciliation (CSVR), a non-governmental organization founded in 1989, working across a multi-disciplinary team to prevent violence, address its effects, and build sustainable peace through various programmes, provided support by facilitating a trauma debriefing session for twelve protest leaders, aimed at addressing the emotional impact of the violence they experienced and offering strategies for self-care.

Individual counselling sessions were offered to the students, but this option was not utilized due to the ongoing volatility of the situation during the protest period from September to October 2016. Additionally, after the protest, the students' focus shifted to their upcoming exams. They were reluctant to use the university's student counselling services as they associated them with the university administration, which they saw as complicit in the police's use of violence against them. The students also expressed mistrust towards mental health workers affiliated with the university, as some of their student lead-

ers and peers had been suspended for their involvement in the protest. A study by Greeff, Mostert, Kahl, and Jonker (2021) found that the traumatic experiences of the protesting students, including those who were injured, remained unresolved as the university's support structures were inadequate to address their mental health needs.

#### *Pursuit of justice through legal processes*

Accessing legal services to seek justice can be a challenging process, particularly when it comes to filing complaints against the police. The procedure requires complainants to go to a police station to open a criminal case, but this can often be an obstacle as police may be reluctant to help with cases against their colleagues. Additionally, there have been reports of a mentality of 'brotherhood', or peer-solidarity, within the police that tacitly condones the use of force against protesters, who are sometimes labelled as troublemakers (Mkhize, 2016). Complainants have also reported experiencing threats and intimidation when attempting to file criminal cases, leading many to refrain from reporting their cases out of fear. These barriers can make it difficult for individuals to seek legal recourse and hold those responsible for misconduct accountable, which can be a significant obstacle in obtaining justice.

Those who manage to file a criminal case must then take the next step of reporting it to the Independent Police Investigative Directorate (IPID), which is legally mandated to investigate and prosecute any police officer accused of misconduct. However, the effectiveness and independence of IPID in investigating and prosecuting these cases have been called into question (Langa, 2014). Police officers found guilty of misconduct are often given light punishments such as written warnings, even in severe cases of murder or torture (Langa, 2014). The odds of success in pursuing criminal cases against police officers are slim, as evidenced by the acquittal of police officers who were captured on video using rubber bullets that killed Andries Tatane, despite clear evidence that he did not pose any threat. This case highlights the difficulties of holding police officers accountable for their use of rubber bullets.

One of the most common remedies available to complainants is pursuing civil claims against the police, as the requirements for these types of cases are less stringent than for criminal cases. To initiate a civil claim, complainants must submit a letter of demand to the Minister of Police along with an affidavit detailing the alleged abuse. The Minister, through the Office of the Attorney General, may choose to defend the case or not. In many instances, the police settle these cases without contesting them. However, the process of pursuing civil claims can be lengthy and time-consuming, as it involves

a significant amount of paperwork and communication between lawyers and the state attorney. On average, it may take anywhere from five to eight years before a case is resolved through this process.

Many complainants are poor and as a result, they cannot afford legal fees associated with this process. There are few human rights organisations as compared to apartheid years where many people were willing to assist individuals pursue such cases. SERI as mentioned earlier through its publication of *Double Harm* report (documenting injuries that students suffered during their protest at Wits) remains as a major human rights organisation which is trying its level best to hold police accountable for their actions of violating protestors rights (Rayner, Baldwin- Ragaven, and Naidoo, 2017). Over the years, SERI has advocated for the rights of victims of police violence, including their well-known legal representation of families of the Marikana massacre where 34 protesting mineworkers were killed by the police in 2012. With regards to the Wits University students' protest, SERI worked closely with other human rights lawyers to legally represent students who were detained during protests and represented the students in their High Court application to interdict the university for proceeding with exams. This litigation work is emotionally highly costly as lawyers often receive death threats for pursuing these cases.

In two recent cases, the Minister of Police was held liable for damages suffered by the plaintiff, Ms Tinny Nkoane, who lost her left eye after being hit by a rubber bullet during a community protest in Botshabelo, Free State (*Nkoane v Minister of Police (3920/2020) [2023]*). In another case, the Minister of Police was also held liable for the injuries suffered by Ms Nomsa Dyibishe after she was shot by the police with rubber bullets (*Dyibishe v Minister of Police (3050/2019) [2023]*). In both cases, both Ms Nkoane and Ms Dyibishe were shot with rubber bullets during protest actions, although they were not part of any protest. These cases serve as a precedent for acknowledging the validity of individual claims for damages resulting from injuries caused by police actions rubber bullets. The compensation in these cases encompassed the pain and suffering due to the injury, as well as current and future medical expenses related to the injuries (including eyes), along with psychological trauma. Nevertheless, it was evident that seeking justice through these cases was challenging for victims, as police denied any responsibility. Ultimately, judges ruled that the police had acted disproportionately in their use of rubber bullets and awarded costs. In light of these cases, Minister of Police Bheki Cele acknowledged the urgent need to review the use of rubber bullets in crowd control management but admitted that an im-

mediate cessation of this was not feasible (Wicks, 2021). It was emphasized the necessity to revise the standard operating procedures governing their use during protests. At the time of this article's publication, these revised procedures had not yet been established. However, the severe health implications of rubber bullets make it abundantly clear that prompt action is required to address this issue and ensure the safety and well-being of individuals during protests.

### Conclusion

The case studies raise concerns about potential violations of the basic rights of protesters and bystanders. The use of rubber bullets by the police in many instances appears to have been disproportionate. Many protesters did not appear to pose a direct threat to the police, yet they were still targeted and injured. According to police guidelines, non-lethal methods should only be used in specific circumstances, such as when there is an imminent threat to public safety or when other methods have been exhausted. The incidents described raise questions about whether these criteria were met and whether the use of force was justified in each case. Police officers need to be continually trained in crowd control and those who use unlawfully use of excessive force should be held to account in both their professional and personal capacity through disciplinary actions, termination of service, or criminal charges, based on the severity of their offence. The capacity of institutions like the Independent Police Investigative Directorate (IPID) must be enhanced to effectively hold officers accountable and promote transparency within law enforcement agencies.

The eye injuries suffered by victims have proven to be highly traumatic and life-altering, as some individuals have experienced permanent vision loss. Compounding their struggles, many victims face limited access to essential medical services and legal assistance, which could help them pursue financial compensation for their eye injuries. Governments should offer free legal representation to victims seeking to file civil cases against police officers who use force unlawfully. This highlights the urgent need for improved resources and support systems to address the long-term consequences of the injuries suffered due to the use of KIPs. these devastating incidents during protests. It also offers opportunities to strengthen SAPS regulations, in particular National Instruction 4 of 2014, to ensure that the use of KIPs should be restricted to circumstances where a threat to life or a threat of serious injury exists, and where all other means to protect life have been exhausted; and to discontinue the practice of skip firing in the discharge of KIPS as it serves no utility, and increases the risk for indiscriminate use.

## References

- Achoki, T., Sartorius, B., Watkins, D., Glenn, S. D., Kengne, A. P., Oni, T., ... & Naghavi, M. (2022). Health trends, inequalities, and opportunities in South Africa's provinces, 1990–2019: findings from the Global Burden of Disease 2019 Study. *J Epidemiol Community Health*, 76(5), 471–481. <https://doi.org/10.1136/jech-2021-217480>
- Alexander, P. (2010). 'Rebellion of the poor: South Africa's service delivery protests- a preliminary analysis', *Review of African Political Economy*, 37, 123, 25–40. <https://doi.org/10.1080/03056241003637870>
- Bandeira, M. (2013). *Developing an African Torture Rehabilitation Model: A Contextually informed, Evidence-based Psychosocial Model for the Rehabilitation of Victims of Torture: Part 2-Detailing an African Torture Rehabilitation Model through Engagement* <https://www.csvr.org.za>
- Booyesen, S. (2007). 'With the ballot and the brick: the politics of attaining service delivery', *Progress in Development Studies*, 7, 1, 21–32. <https://doi.org/10.1177/146499340600700103>
- Bruce, D. (2019). "The Use of Less-Lethal Weapons in South African Prisons and Crowd Management," *Institute for Security Studies Monographs 201* (2019): iii–63. <https://hdl.handle.net/10520/EJC-1d321dbe67>
- Bruce, D., (2016). Public Order Transparency – Using freedom of information laws to analyse the policing of protest, *South African Crime Quarterly*, No 58. <http://journals.assaf.org.za/sacq/article/view/1508/1448>
- Bruce, D., (2012). The Road to Marikana: Abuses of Force During Public Order Policing Operations, The South African Civil Society Information Service, 12 October 2012. <https://sacsis.org.za/site/article/1455>
- Bruce, D., The Road to Marikana: Abuses of Force During Public Order Policing Operations, The South African Civil Society Information Service, 12 October 2012. <https://sacsis.org.za/site/article/1455>
- Burki, T. (2023). The health consequences of crowd-control weapons. *The Lancet*, 401(10381), 987–988. [https://doi.org/10.1016/S0140-6736\(23\)00613-X](https://doi.org/10.1016/S0140-6736(23)00613-X)
- Çelebi, E., Adam-Troian, J., & Mahfud, Y. (2022). Positive links between exposure to police violence, PTSD, and depression symptoms among yellow vests protesters in France. *Journal of interpersonal violence*, 37(5–6), 2267–2288. <https://doi.org/10.1177/0886260520935863>
- Chamberlain, L. (2016). Assessing enabling rights: striking similarities in troubling implementation of the rights to protest and access to information in South Africa. *African Human Rights Law Journal*, 16(2), 365–384. <https://hdl.handle.net/10520/EJC-4add1b429>
- Coleman, A. L., Williams, G. A., & Parke, D. W. (2020). Ophthalmology and "Rubber Bullets". *Ophthalmology*, 127(10), 1287–1288. <https://doi.org/10.1016/j.optha.2020.07.001>
- De Visser, T., & Powel, D. (2012). 'Service Delivery Protest Barometer 2007–2012', Cape Town, South Africa: Multi-level Government Initiative, Community Law Centre.
- De Vos, P. (2018). The constitutional limits of disruptive protest: The case of student protest in South Africa. *Zeitschrift für Menschenrechte*, 12(1), 64–87.
- Docrat, S., Besada, D., & Lund, C. (2019). An evaluation of the health system costs of mental health services and programmes in South Africa. *Cape Town: Alan J Flisler Centre for Public Mental Health, University of Cape Town.*
- Duncan, J. (2016). *Protest nation: The right to protest in South Africa.* Durban, South Africa: University of Kwa-Zulu Natal Press
- Dyibishe v Minister of Police (3050/2019) [2023] ZAECMKHC 108 (5 October 2023), <https://www.saflii.org/za/cases/ZAECMKHC/2023/108.html>
- Greff, M., Mostert, K., Kahl, C., & Jonker, C. (2021). The# FeesMustFall protests in South Africa: Exploring first-year students' experiences at a peri-urban university campus. *South African Journal of Higher Education*, 35(4), 78–103. [https://hdl.handle.net/10520/ejc-high\\_v35\\_n4\\_a6](https://hdl.handle.net/10520/ejc-high_v35_n4_a6)
- Haar, R. J., Iacopino, V., Ranadive, N., Dandu, M., & Weiser, S. D. (2017). Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review. *BMJ open*, 7(12). <https://doi.org/10.1136/bmjopen-2017-018154>
- INCLO (2016). *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons.* p.24–25.
- Klaasen, A. (2020). The quest for socio-economic rights: The rule of law and violent protest in South Africa. *Sustainable Development*, 28(3), 478–484. <https://doi.org/10.1002/sd.2038>
- Lancaster, L. (2016). At the heart of discontent-measuring public violence in South Africa. *Institute for Security Studies Papers*, 2016(292), 1–20. <https://hdl.handle.net/10520/EJC197028>
- Langa, M (2014). *Analysis of Existing Data on Torture in South Africa with Specific Focus on Annual Reports Published by IPID and JICS.* <https://www.csvr.org.za>
- Langa, M. (2017). Researching the# FeesMustFall movement. In M. Langa (Ed.) *Hashtag: An analysis of the# FeesMustFall movement at South African universities* (pp. 6–12). Johannesburg, South Africa: Centre for the Study of Violence and Reconciliation.
- Langa, M., & Von Holdt, K. (2012). Insurgent citizenship, class formation and the dual nature of a community protest: a case study of Kungcatsha. *Contesting transformation: Popular resistance in twenty-first century South Africa*, 80–100. <https://wiser.wits.ac.za/>
- Lartzien, R., Schouman, T., Raux, M., Debelmas, A., Lanciaux-Lemoine, S., Chauvin, A., ... & Foy, J. P. (2019). Yellow vests protests: facial injuries from rubber bullets. *The Lancet*, 394(10197), 469–470. [https://doi.org/10.1016/S0140-6736\(19\)31764-7](https://doi.org/10.1016/S0140-6736(19)31764-7)
- Lodge, T. (2011). *Sharpeville: an apartheid massacre and its consequences.* Oxford, UK: Oxford University Press.
- Madima, K., Rakhubu, A., & Tirivangasi, M (2022). Effectiveness of Public Order Police Strategies in Curbing Common Acts of Violence During Service Delivery Protests. In *The Palgrave Handbook of Global Social Problems* (pp. 1–14). Cham, Switzerland: Springer International Publishing. [https://doi.org/10.1007/978-3-030-68127-2\\_194-1](https://doi.org/10.1007/978-3-030-68127-2_194-1)
- Maringira, G., Ndelu, S., Gukurume, S., & Langa, M. (2022). 'We Are Not Our Parents'– beyond Political Transition: Historical Failings, Present Angst and Future Yearnings of South African Youth. *International Journal of Transitional Justice*, 16(1), 101–

117. <https://doi.org/10.1093/ijtj/ijab040>
- Mayosi, B. M., Flisher, A. J., Lalloo, U. G., Sitas, F., Tollman, S. M., & Bradshaw, D. (2009). The burden of non-communicable diseases in South Africa. *The lancet*, 374(9693), 934- 947. [https://doi.org/10.1016/S0140-6736\(09\)61087-4](https://doi.org/10.1016/S0140-6736(09)61087-4)
- Mkhize, S. M. (2016). *A cross-sectional study of traditional police culture themes amongst experienced South African Police Service officials* (Doctoral dissertation).
- Nair, N., More than 800 teargas canisters and almost 17,000 bullets fired during July riots in Gauteng: Police, Times Live, 22 November 2021, <https://www.timeslive.co.za/news/south-africa/2021-11-22-more-than-800-teargas-canisters-and-almost-17000-bullets-fired-during-july-riots-in-gauteng-police/>
- Ndaba v Minister of Safety and Security [2005] ZAGPPHC 23 (22 February 2005).
- Ndlovu, H. (2017). Womxn's bodies reclaiming the picket line: The 'nude' protest during# FeesMustFall. *Agenda*, 31(3-4), 68-77. <https://doi.org/10.1080/10130950.2017.1391613>
- Nocuze, B. (2020). *A Philippi woman lost her eye when police fired into her yard. Seven months later, no one held responsible*. <https://groundup.org.za/article/philippi-woman-lost-her-eye-april-when-police-fired-her-yard-seven-months-later-investigation-still-continuing/>
- Pillay, Y. (2019). State of mental health and illness in South Africa. *South African Journal of Psychology*, 49(4), 463-466. <https://doi.org/10.1177/0081246319857527>
- Rappert, B. (2007). Policing and the Use of Force: Less Lethal Weapons. *Policing: A Journal of Policy and Practice*. Vol 1. Number 4. Pp. 472-484. <https://doi.org/10.1093/police/pam066>
- Rayner, M., Baldwin-Ragaven, L., & Naidoo, S. (2017). *A double harm: police misuse of force and barriers to necessary health care services*. Johannesburg, South Africa: Socio- Economic Rights Institute of South Africa (SERI).
- Richardson, P., Swart, L. A., Govender, R., & Seedat, M. (2022). Protest injuries. *South African Crime Quarterly*, 71(1), 2-61. <https://doi.org/10.17159/2413-3108/2022/vn71a12891>
- Smillie, S. (2021). 'Trigger-happy' use of rubber bullets by police results in death and lifelong injury in South Africa, Daily Maverick, 12 August 2021. <https://www.dailymaverick.co.za/article/2021-08-12-trigger-happy-use-of-rubber-bullets-by-police-results-in-death-and-lifelong-injury-in-south-africa/>
- Stander, F. (2013). Report on the Use of Less-Lethal methods of Defense in a Police Environment.
- Von Holdt, K. (2014). On violent democracy. *The Sociological Review*, 62, 129-151. <https://doi.org/10.1111/1467-954X.12196>
- Washinyira, T. (2020). Man blinded by rubber bullet during 2018 protest still waiting for action from IPID, GroundUp, 2 April 2020. <https://groundup.org.za/article/man-blinded-rubber-bullet-during-2018-protest-still-waiting-action-ipid/>
- Wicks, B (2021). Police-looking-into-new-rules-for-use-of-rubber-bullets. Citizen, 29 March 2021. <https://www.citizen.co.za/news/south-africa/police-looking-into-new-rules-for-use-of-rubber-bullets/>

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# Less-lethal weapons: ocular trauma in Chile as psychosocial trauma. Challenges from a human rights and comprehensive perspective

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## Key points of interest

- Survivors of ocular trauma from state violence suffer the consequences of psychosocial trauma.
- Rehabilitation of survivors of psychosocial trauma must consider comprehensive reparation, the right to truth, justice and guarantees of non-repetition.
- Psycholegal support and survivor organisations are relevant in recovery from psychosocial trauma

## Abstract

*Introduction:* In October 2019 in Chile, massive protests broke out in the so-called social uprising. The repressive response of the armed forces and Carabineros (Police) resulted in serious and massive violations of human rights, with between 400 and 500 victims of ocular trauma caused mainly by shots from anti-riot shotguns, constituting the largest number of cases in the world linked to a single event. It is proposed to evaluate the different dimensions of the impact of ocular trauma due to state violence, using the concept of psychosocial trauma and a support model that integrates the medical-psychological and social dimensions. *Methods:* Human rights violations of the period are described, focusing on cases of ocular trauma, and state and civil society responses. The requests of a survivors' organisations regarding truth, justice and reparation is presented. A clinical case of ocular trauma treated in our centre is analyzed. *Results:* Survivors of ocular trauma manifest post-traumatic reactions regardless of the severity of their ocular injuries. The impact on the mental health of survivors of ocular trauma due to state violence is a phenomenon where the psychic and psychosocial impact of trauma due to socio-political violence intersects with the short- and long-term mental health effects. *Discussion:* The impact of sociopolitical trauma must be understood considering both the individual and social subject, considering their cultural, socioeconomic and political reality. Recovery from traumatic psychological injury must be addressed in its medical, sensory rehabilitation, psychological and psychosocial dimensions, including processes of social recognition, search for justice and comprehensive reparation of damage. In contexts of impunity, a model is proposed that integrates rehabilitation with psycho-legal support, promotion of agency and organisation, within the framework of commitment to the movement and principles of human rights.

**Keywords:** State Violence, ocular trauma, psychosocial trauma, comprehensive reparation, human rights

### Social uprising in Chile and the impact of ocular trauma

#### *The social revolt of October 2019*

In October 2019 in Chile, massive protests were unleashed in the so-called social uprising or revolt, which began in Santiago and soon spread to practically all regions of the country, continuing until March 2020. The immediate trigger for the crisis was the hike in public transport fares in the capital, which led to a series of mass evasions in the Santiago metro, organised by high school students. This movement was the culmination of an escalation of social protests in previous years over student, social security, feminist, environmental and other demands.

The political system was unable to provide effective solutions to this series of demands, anchored in structural inequality, that the current democratic system has not been able to resolve. Chile is 68% more unequal than the average OECD country and the average income in the country does not reflect the GDP growth of the last decade (Instituto Nacional de Derechos Humanos [INDH], 2019). In addition to this structural inequality and the deficit in ensuring social rights, which weakened the credibility of the political system's ability to resolve popular unrest, a series of scandals were added in the years prior to the social outbreak, such as: set-ups by Carabineros de Chile (state police) to accuse members of the Mapuche people<sup>1</sup> of acts in which they had not participated, the murder of Mapuche community members, embezzlement of funds in the police and the army, and irregular financing of political campaigns, which ended up undermining confidence in many public institutions.

The spark that ignited the demonstrations occurred with the first mass evasions in the capital's underground train around October 10, 2019, which progressively escalated, as a result of the violent police response. The demonstrations had their peak on Friday October 18, when the metro service was completely interrupted and massive protests were generated in various parts of the capital; people were banging pots and pans, and looting and burning some metro stations. As a result of this critical situation, on the night of October 18, the president at the time, Sebastián Piñera, decreed a constitutional state of emergency in the Metropolitan Region, which enabled the military and the police to take action, as well as the establishment of other measures such as a curfew. In the days that followed, the protests spread to various regions of the country, as did the state of emergency measures. In a national television broadcast on October 20, the President of the Republic made the following statement, which for many triggered memories of the recent dictatorial period: *"We are at war against a powerful, implacable enemy that respects nothing and no one and is willing*

*to use violence and crime without limit"*. Once again, the people were seen as the "enemy of the fatherland".

The protests lasted for several weeks, reaching a climax on October 25 with mass marches in Santiago and several other regions of the country; more than a million people marched peacefully in the capital alone. Aware that the basis of structural inequality lay in the political constitution approved through a fraudulent plebiscite in 1980 during the Pinochet dictatorship (Spyer & Alvarado, 2021), the slogans of these demonstrations focused especially on the demand to convene a constituent assembly to draft a new constitution. On November 15, in an attempt to find an institutional solution to the social unrest, most political parties signed an agreement to initiate a constituent process, the so-called "agreement for peace and a new constitution". However, social protests continued until the beginning of 2020, only to be interrupted by the COVID-19 pandemic crisis.

#### *Massive human rights violations and eye trauma*

The response of the forces of order and security, both the police and the army during the period of constitutional state of emergency, resulted in serious and massive human rights violations throughout the country, as noted by various international organisations that visited Chile in the context of the social uprising (United Nations Office of the High Commissioner for Human Rights [OHCHR], 2019; Amnesty International [AI], 2020; Human Rights Watch [HRW], 2019), and the National Institute of Human Rights (INDH, 2019) itself in its report for 2019. The report of the United Nations High Commissioner for Human Rights (2019) states: *"from 18 October onwards, a high number of serious human rights violations have been committed. These violations include excessive or unnecessary use of force that led to arbitrary deprivation of life and injuries, torture and ill-treatment, sexual violence, and arbitrary detentions. (...) the improper use of less lethal weapons and cases of ill-treatment, are recurrent over time and space, and involve the same alleged perpetrators and victims. (...) The alarmingly high number of people with injuries to the eyes or face attests to this serious violation"* (p. 29).

The National Institute of Human Rights as of October 2023 (INDH, n.d.) counted 3,777 victims who reported violations of their human rights in the context of the protests, including 7 deaths and 3,581 people with physical injuries not resulting in death, registering a total of 6,807 reported incidents. Of the total number of victims, 16% were children or adolescents and 25% were women. As of 30 November 2019, the INDH (2019) reported 1,807 injuries by firearms, 87.42% by "less lethal" weapons (mainly pellets from riot shotguns with

1 The Mapuche are the largest group of indigenous people in Chile.



multi-projectile cartridges), 2.58% by lethal weapons and 10% unclassified weapons. It also reported 1,462 injuries from other causes, including injuries from tear gas bombs, from blows inflicted by the police or members of the Armed Forces, and various traumas caused by state agents. For the same period of time, the Ministry of Health presents a statistic of 11,179 people injured in the context of the social conflict (the difference in the figure is explained by the fact that the INDH only counts injuries caused by state agents who reported the incident to this institution). The massive scale of these human rights violations has not been seen in Chile since the Pinochet dictatorship.

Carabineros, through an official request from a group of journalists, stated that between October and December 2019 they fired 152,000 12-gauge cartridges, each with 12 pellets, becoming the main method of injury to the population during the outbreak (Weibel & Jara, 2020). Reynhout (2020), in a ballistic study, shows that even when following the recommendations for use, there is a high probability that the projectiles will cause eye trauma. On the other hand, there is evidence that the pellets used during the uprising contain toxic metals, harder than the so-called “rubber” pellets, causing greater tissue injury. A study of the composition of pellets extracted from eye injuries shows that they have a composition of 20% rubber and 80% of various other compounds, mainly silica, barium sulphate and lead (Jorquera & Palma, 2019). Many victims to this day still have pellets in different parts of their bodies that cannot be removed, with the consequent risk to their long-term health (Ministerio de Salud de Chile [MINSAL], 2023a).

National and international public opinion was particularly shocked by the large number of injuries in the form of eye trauma caused mainly by buckshot or pellets from riot guns, “less lethal” weapons that use kinetic impact projectiles and are authorised by the police in various parts of the world for the control of public order in mass demonstrations. Eye trauma in Chile during the period of the social uprising, ranging from contusions to penetrating wounds and eye bursts, has accounted for the largest number of such cases in the world (Rodriguez et al., 2021).

The Ministry of Health defines ocular trauma as “*trauma caused by blunt or penetrating mechanisms to the eyeball and its peripheral structures, causing tissue damage of varying degrees of affectation (...) with temporary or permanent compromise of visual function*” (MINSAL, 2022, p. 7). In the case of severe ocular trauma, various complications can occur, even leading to anatomical or functional loss of the organ, despite adequate treatment.

Officially, in 2019, the INDH counted a total of 347 eye injuries caused by state agents and later, in a 2020 report, recorded a total of 445 cases of eye trauma “*resulting from the indiscriminate, excessive and out-of-protocol use of firearms and other*

*projectiles*” (INDH, 2020, p. 15), finding that 8% corresponded to ocular open-globe injury (a full-thickness wound of the eye-wall) or total loss of the organ. To date, there have been 220 complaints for some type of eye trauma, 82 related to loss of vision and 50 of them related to ocular open-globe injury. The Comprehensive Eye Repair Programme (PIRO) implemented by the Ministry of Health reports 397 cases entered into the programme by March 2022, and 60 cases of eye trauma registered but not finally entered into the care programme. There is still confusion regarding the total number of victims of eye trauma, an example of this being the controversial decrease of the official number of cases reported by the INDH (2021) to 181 (those cases prosecuted), while its official website, continues to report a total of 220<sup>2</sup>. Finally, survivors’ organisations count more than 500 cases, as they submitted to an investigative commission of the Chilean Chamber of Deputies (Cámara de Diputados de Chile, 2021). Among the victims there are two survivors with bilateral ocular open-globe injury and permanent total loss of vision, one from a riot shotgun and the other from severe craniofacial trauma caused by the impact of a tear gas canister fired by the police. After the social uprising, less frequent cases have continued to occur, the latest being a woman with an open-globe injury with a pellet lodged in her eye, an aggression that occurred, significantly, on 11 September 2023, the commemoration of the fiftieth anniversary of the 1973 coup d’état.

A study by the Ophthalmology unit of the Hospital del Salvador, a hospital in the capital that treated eye injuries during the social uprising, reported that between October and November 2019, 259 patients were evaluated for eye trauma, 75% of the cases were due to kinetic impact projectiles, and the rest to injuries caused by other types of aggression, including tear gas bombs, blows from batons or fists, water from the water cannon and firearms. About 50% of the cases had blindness or severe vision loss and approximately 20% suffered eye open-globe injury (Rodriguez et al., 2020).

### State response and civil society organisations

The “Agreement for Peace and the New Constitution” of November 2019 was the effort of the political system to respond to the unrest among Chilean society during the social revolt, setting rules to initiate a constituent process that would replace the 1980 Constitution inherited from the military dictatorship, with a new text drafted in a democratic manner/context. In October 2020, a plebiscite was held that approved the drafting of a new constitution through an elected constitutional convention, that delivered a progressive constitutional project that was re-

2 www.indh.cl

jected by the citizens in a second plebiscite in September 2021. The political forces then agreed to promote a new process, this time much more limited both in terms of democratic participation and time, with the resultant conservative proposal also being rejected in a plebiscite in December 2022. This concluded a process of constitutional change as a means of addressing the causes of the crisis of the social revolt in October 2019.

In parallel, on 22 November 2019, the government of Sebastián Piñera created the Technical Advisory Committee on Human Rights, headed by the Undersecretariat for Human Rights, in order to respond to the recommendations made to the State of Chile in relation to the right to protest and the role of the police. From this coordination, the Programa Integral de Reparación Ocular (PIRO) (Comprehensive Eye Reparation Programme) was implemented in order to provide care and reparation to victims of eye trauma in the context of the social unrest. This programme operated in the Hospital del Salvador in Santiago and only had one psychiatrist, one psychologist, one ophthalmologist, one occupational therapist, one medical technologist, one occupational therapist, two social workers, one support technician and one administrative assistant to attend to all the victims in the country. In July 2022, the new government, headed by President Gabriel Boric, created the Plan de Acompañamiento y Cuidados a Personas Víctimas de Trauma Ocular (PACTO) (Support and Care Plan for People Victims of Ocular Trauma), strengthening the previous programme, which, from that moment on, has addressed health care in an ongoing manner, emphasising mental health and having responsible health workers in different parts of the country. There is a technical regulation for operation, approved in August 2023 (MINSAL, 2023b). However, organisations have been critical, emphasising the fact that it does not attend to victims of non-ocular injuries, that there are problems in the programme's funding<sup>3</sup> and that it is dissociated from progress in other reparation measures.

The national budget law also included a provision to finance presidential pensions for victims of violence during the social upheaval who had a permanent, complete or partial impairment of their ability to work, subject to accreditation by the National Human Rights Institute (INDH). As of 03 January 2023, 367 pensions had been granted. At present, a controversy has arisen regarding these presidential pensions, questioning their validity and seeking ways to cancel them in some cases, stating that people who have a criminal record or have judgements against them would not be worthy of them.

For its part, on 8 January 2020, the Chamber of Deputies created a Special Commission of Inquiry into the actions of the government and the police, on the control of public order issue. In numerous sessions, victims, human rights organisations and authorities were heard, concluding that serious, massive and widespread human rights violations had occurred and that the policy exercised had the purpose of punishing and discouraging the civilian population from exercising their legitimate right to protest. In its conclusions, the Inquiry stated that the State has a duty to investigate, punish the guilty parties and make reparations to the victims. To this end, it recommended strengthening the PIRO Programme, developing a comprehensive reparation policy and instructing the State Defence Council to agree to accept all compensation claims filed by victims of human rights violations that occurred from October 2019 onwards. None of these recommendations have been fully implemented by the Chilean State.

In both the Chamber of Deputies and the Senate, various bills have been presented that seek to legislate on the use of force, placing greater requirements on the use of dissuasive means in demonstrations; others aim to address structural aspects of state security legislation, pardon or amnesty for political prisoners of the uprising and several bills refer to reparations, but none of them have reached the quorum necessary for their approval, so they continue to be discussed in parliament.

In August 2022, a Roundtable for Integral Reparation was created by the government, with the active participation of victims in zonal meetings, in which various proposals were discussed and the opinions of professionals and academics were heard. All of this was recorded, systematised and consolidated in a proposal that was disseminated among the survivors in January 2023. However, it should be noted that, more than four years after the social upheaval, the implementation of these recommendations by the State has been slow and scarce, and have not fully complied with its obligations in terms of Truth, Justice, Reparation and Guarantees of Non-Repitition.

#### *Civil society response*

The response from civil society was immediate: students and health professionals in particular banded together and organised to establish points of assistance in the streets, providing first aid care to those injured in the demonstrations since 19 October 2019. Organisations such as the Red Cross, Salud a la Calle, Movimiento Salud en Resistencia and others did the same. A health network of more than 15 organisations was established to respond to the violence of the State during the first weeks of the social outbreak. Supply collection centres were also set up,

3 In 2023 the Chamber of Deputies decreased by 100% the special budget allocated to this item for 2024.

coordinating donations in Chile and abroad, with hundreds of volunteers organised throughout the country.

Health posts provided medical assistance, psychological first aid and legal support to victims. Timely referrals for more complex cases to health centres were arranged in coordination with the State emergency service, and deferred check-ups and evaluation of old pellet wounds were carried out. The organisations estimate that the informal health network attended to 4,600 victims in first aid posts, where 75% were men, 21% women, 4% non-binary, 7% were adolescents between 14 and 17 years old, and there were cases of children under 17 years old, pregnant women and older adults (Movimiento Salud en Resistencia, 2019).

Human Rights Observers Brigades were also organised, made up of hundreds of volunteers who recorded the aggressions committed by the police at demonstrations and police stations. Lawyers and law students counselled victims and filed civil and criminal complaints to shed light on crimes and seek punishment for the perpetrators. Several Professional Associations were active through their respective Human Rights Departments, producing reports, studies, organising forums, talks and providing assistance in their respective specialities. It is important to highlight the role of the College of Ophthalmologists, which produced crucial reports on the high number of victims of eye trauma. For its part, the Chilean Medical Association produced multiple reports on injuries and health damages, following the principles of the Istanbul Protocol, data that has been very useful in judicial proceedings (Colegio Médico, 2020).

#### *Little progress in justice and persistent impunity*

Despite the efforts made by civil society organisations, the scant and slow response of the Chilean justice system to the cases of human rights violations perpetrated during the social unrest is devastating. Four years on, of the 10,568 complaints filed, only 27 cases have led to convictions. That is to say, only 2% of matters have been brought to justice (AI, 2023). By 2021, the Prosecutor's Office had already closed 46% of the cases without formalised charges (Weibel, 2021), and by the fourth anniversary of the outbreak in October 2023, 80% of the cases had been closed (Mellado, 2023).

Our Centre for Mental Health and Human Rights is representing in court six victims of eye trauma, including the two survivors with double eye open-globe injury. In these cases, the actions of police officers transgressed their own rules and regulations for the establishment of public order and the use of force, and failed to respect the principles of legality, proportionality, gradual escalation and accountability established by the United Nations, for the legitimate use of force.

The biggest problem in obtaining justice has stemmed from the difficulty in identifying the perpetrators of the crimes, as there has been silence on the part of the agents of the agencies involved, and a refusal or delay in handing over documents, records and evidence. This has been compounded by the destruction or alteration of the body camera footage of the agents and their records. Only in one of the cases have we achieved justice in criminal matters, since after an exhaustive investigation carried out by the Public Prosecutor's Office and after a long oral trial, a conviction was secured against the direct perpetrator for the crime of unlawful coercion causing very serious injuries. They were sentenced to imprisonment for 12 years and 183 days, a process that is currently under final judgement.<sup>4</sup> At the same time, in this case, an administrative inquiry was carried out that ended with the dismissal of two Carabineros captains, and a civil claim for compensation is in process, having been accepted in the first instance by the courts.

The other cases are still at the investigation stage with no one formalised and the respective civil claims for reparation still being processed.

#### **Victims' groups and their demands**

Victims of violence by state agents began to meet and seek each other out shortly after the start of the mobilisations in October 2019. Thus, as early as November, the first victims' meetings were held, in which interested social actors also participated, seeking mutual support and coordination. They were mainly developed in the first two years after the outbreak, providing socio-affective support, recognition, as well as guidance on legal and health care needs. Subsequently, they have remained movements that carry out public awareness-raising and policy advocacy activities, coordinating with public and civil society institutions to advance reparations and justice. The most well-established organisation during that time and that maintains activities to this day is the Coordinadora de Víctimas de Trauma Ocular (CVTO) (Ocular Trauma Victims Organisation), an organisation led by survivors and family members.

For the organisations, it has not been an easy road and they have a critical view of what has happened in terms of justice and reparation. Along with the limited advances in justice, they have had to confront adverse public opinion and political signals that tend to blame them and criminalise their life stories and demands. The hostile and stigmatising socio-political context often translates into a worsening or making chronic the survivors' mental health problems, which over time has led to fatigue and lack of participation in the organisations. In the words of a leader

<sup>4</sup> Case RIT 60-2022 of the Oral Criminal Court of San Bernardo.

of the Coordinadora de Víctimas de Trauma Ocular, what she perceives is “*a change in society that is more hostile, not only in common interactions but also towards the people who were attacked, we are stigmatised, judged, treated as criminals... it has been very hard not to feel empathy from the people or the government’s intention to take action regarding human rights*”.

Despite the existing state health programmes, the opinion of the collective is that they do not meet their needs. The evaluation of the PIRO and PACTO programmes is that they are insufficient for the existing demand, with poor coverage in regions, few professionals (and without all the necessary specialties), little access to psychological care and without the assistance of psychiatrists on a reliable basis. The lack of training in human rights and ethical commitment of some professionals has led to experiences of re-victimisation and privatisation of trauma (in the sense of psychological internalization of suffering, which results in silence and experiencing harm as an individual/private problem, dissociated from the social roots of violence). The programme lacks social, labour, economic and educational intervention dimensions, which have been impacted for eye trauma survivors, and are an aspect of a comprehensive rehabilitation programme.

#### *Demands from the victims’ collective*

From August 2022 to March 2023, the Coordinadora de Víctimas de Trauma Ocular, together with other organisations and survivors, participated in meetings of a reparation roundtable promoted by the Human Rights Secretariat of the Ministry of Justice and Human Rights, which gathered the collective’s views and requests for reparation (Ministerio de Justicia y Derechos Humanos de Chile [MinjuDDHH], 2023). From these discussions, proposals and recommendations emerged regarding the State’s responsibilities concerning reparation and respect for human rights:

- Right to Truth. This includes the recommendation that the State take measures to clarify the events that occurred during the social uprising, specifying their social, economic, political and cultural causes; that it address the impact of the violence on children and other specially protected groups; and that it create a truth commission that recognises the status of victims.
- Right to Justice. It is recommended to strengthen access to adequate justice, to strengthen support processes in trials, to investigate crimes diligently, to avoid repeated testimonies in various institutional instances and to pursue the punishment of those responsible.
- The recommendations on Comprehensive Reparation address aspects of compensation (such as the creation of reparation pensions for those whose lives or work have been affected, and compensation for medical expenses) and restitution (such as

reinsertion into the labour market, academic reintegration and the creation of study grants for victims).

- For health rehabilitation, recommendations included: a) The creation of a physical and mental health care programme that is “*continuous, regular, free and lifelong, with universal access and cultural relevance*” (MinjuDDHH, 2023, p. 46) throughout the country, where officials are trained in a human rights and gender approach. b) Support for access to health services for victims in areas far from specialised care. c) That the programme has a comprehensive approach and includes the different types of victims of institutional violence. d) Technical and ethical quality of health and justice professionals, which minimises the experience of re-victimisation in care and drop-outs from support programmes.
- Guarantees of Non-Repetition underlines the need to address the socio-economic causes of the outbreak and the processes of stigmatisation and institutional discrimination. It also includes proposals to strengthen national human rights institutions, human rights education programmes and a rights-based approach in law enforcement and security institutions.
- Regarding Memory, the aim is to promote the production of knowledge and cultural projects on the social revolt and human rights, the creation of documentation centres and the protection of spaces of memory in places that were significant during the social demonstrations.

#### **Case report of N., eye trauma survivor**

Since the social uprising of 18 October 2019, the NGO CINTRAS (Centre for Mental Health and Human Rights, a member of the International Rehabilitation Council for Torture Victims - IRCT) has assisted people who have suffered eye trauma and their families, facilitating their psychosocial and physical rehabilitation through psychological care, occupational therapy, psychiatric and physiotherapeutic treatment, employment support, counselling and legal support during the rehabilitation process. In total, CINTRAS has so far attended to 149 victims of human rights violations in the context of the social outbreak, 18 of them with eye trauma injuries.

N. is a young male university student who was 17 years old at the time of the attack. It is important to note that his mother had been detained during the military dictatorship and his grandfather was a political prisoner and torture survivor during that period. In the early hours of Saturday 21 December 2019, N. was demonstrating with friends and around 30 neighbouring families in his neighbourhood in the city of Santiago. From inside a gas vehicle that arrived in the area, three unmarked policemen got out and, without any provocation from the demonstrators, began to shoot with riot shotguns and tear gas

towards the people from about 10 metres away. N. was hit by 7 pellets fired at close range, two in his legs, three in his arms, one in his gluteal zone and one in his face. He suffered total loss of vision in his left eye due to an eye open-globe injury. Carabineros did not help and N. had to be taken by his family to one and then another private clinic in the capital.

N. has received comprehensive rehabilitation at our centre since February 2020 to date, with care from a psychiatrist, psychologist, legal assistance from a lawyer and occupational therapy. At the beginning he received home support due to his visual impairment, where the degree of affectation of his time-space orientation and the degree of difficulty for his functional performance were evaluated. An intervention aimed at teachers and students was also coordinated with the management of the school where N. was studying to ensure his integration in a safe and non-discriminatory environment; safe access routes were implemented in the establishment, he obtained a suitable location within the classroom and the pedagogical material was modified to accommodate his visual impairment. N. always refused to use a cane as instructed.

As he began his rehabilitation process at CINTRAS, N. was seen by an ophthalmologist, a member of the Human Rights Department of the Chilean Medical Association, who carried out an evaluation and summary of the medical care received to date. The ophthalmologist drew up a medical report on the injuries inflicted on him in the context of the human rights violations, diagnosing: ocular open-globe injury due to pellet impact in the left eye, palpebral injury in the left eye due to pellets, multiple pellet injuries in the upper and lower right and left limbs and left gluteal zone, risk of post-traumatic stress disorder. In October 2020, he was classified by the State as suffering from a permanent visual sensory impairment of 24.8%.

At the beginning, N. presented with many nightmares, difficulty falling asleep, frequent headaches, re-experiencing and flashbacks, difficulties that gradually disappeared over the course of the months of treatment. He still has feelings of hopelessness, impotence and anger about the experience, directed against all the forces of law and order, especially against Carabineros. He also suffers from hyper-alertness and hyper-activation, with recurrent fears of losing his other eye, and experiences anxiety when in contact with the police. For example, when he went to take the tests required for university admission at the end of 2020, when he arrived at the school, police officers carried out the usual identity check in this context, which caused him an anxiety crisis.

The family suffering caused by the repressive experience is evident. His sister has required psychological support following the assault and the whole family group has been financially

affected by the health expenses associated with the treatment of the physical injuries.

Another disturbing aspect of N.'s recovery was dealing with the early limitations of mobilisation due to the COVID-19 pandemic. After having participated in a social outburst where millions of people took to the streets under the slogan "Chile woke up" with demands for equality and dignity, the pandemic suddenly brought him back home to prevent contagion. During 2020, the country was under quarantine and curfew, and restrictive four-hour travel permits made it very difficult for him to participate in his rehabilitation activities.

During June 2022, N. was evaluated at the Forensic Medical Service of the Ministry of Justice and Human Rights, a procedure requested by the prosecution in a case sponsored by the National Institute of Human Rights and the lawyer of our centre. A psychologist and an ophthalmologist carried out an expert assessment based on the Istanbul Protocol and drew up a report highlighting the permanent disability resulting from the eye trauma caused by the firearm with functional and aesthetic sequelae, post-traumatic anxious-depressive symptoms, and the concordance between the physical and psychological findings and the allegations of abuse. N. states how these new evaluations affect him emotionally, despite the meaning that the search for justice has for him, "*Now, after they did the physical examination here, having to recount everything, I have dreams again of gunshots, of police officers nearby and all that*".

N. has elaborated that, despite the life break he experienced, he will never regret what he lived through and expresses feelings of pride in his participation in a just movement. Today, after the rejection of the project for a more progressive constitution in September 2022, he is frustrated by the fact that social changes did not transpire: "*that Chile that woke up, went back to sleep*". Regarding his visual rehabilitation, he considers that he has normalised seeing with only one eye, has resumed his occupational and functional life, takes more precautions and has a better psychological integration of the traumatic experience.

However, he maintains reactions of re-traumatisation associated with subjective responses to socio-political keys: the scant recognition by the state and society of victims of eye trauma, the stigmatisation of victims, the poor progress in justice and the setback in political projects for change. He maintains a low level of trust in institutions. The suicide of four victims of eye trauma has had a notable impact on N., reactivating traumatic emotional processes from a shared experience and a high level of identification with the affected community. It expresses the need to repair the dignity of those affected, blaming the State for the abandonment and precariousness of their lives.

In the case of N., the community's power of reparation has been evident. The support and recognition of his family, neighbours, friends, survivors' organisations and human rights organisations have played a key role in the security, the link with the community and the capacity to express and elaborate on the de-privatisation of pain.

**Reflection and conclusions. Eye trauma as psychosocial trauma: challenges from a human rights and reparation perspective.**

The damage caused by state violence during the social uprising in Chile in the form of eye trauma is evident both in the number of people impacted and the extent of their injuries. The case of N. generates several relevant considerations, including: the traumatic reactions in the form of anguish and avoidance show us the deterrent effect that State violence can have on mobilised people, limiting their right to protest; the evident transgenerational connection of the struggles and the damage that links the experience of the dictatorship with that of the social revolt; the impacts that the search for justice can have by exposing survivors to successive evaluations that force them to recall the events in order to retell them, with the accompanying risk of re-victimisation, especially when the procedure is inadequate or ill-timed. These are issues that deserve a broader and deeper analysis, but which do not fit within the context of this paper.

The human wound produced by eye trauma due to State violence has an impact on different dimensions and can be evaluated in a more comprehensive way utilising the concept of psychosocial trauma, which accounts for the impact on the bodies and vision of survivors, as well as on their mental health, interpersonal and broader social relationships, identity, frames of reference and their relationship with the social and political development of groups and institutions. Trauma as a "total social fact" (Madariaga, 2018), involves the person in an integral way, impacting on a biological, psychological and social level; it can only be fully understood by considering the reality of the individual subject (individual trauma) as well as its dimension as an event installed in the social subject (social/collective trauma), its cultural, socio-economic and political reality. The social subject in social psychology is the group of people united by a common identity and experience, who have agency over the society in which they live. It is necessary to bear in mind that the trauma produced by socio-political and organised violence has its origin in and impacts on social relations, reflected in the concept of psychosocial trauma, coined by Ignacio Martín Baró based on the experience of violence in Latin America (in Madariaga, 2018).

The impact on the mental health of survivors of eye trauma due to state violence is an obvious phenomenon with complex roots, where risk factors for both the psychic and psychosocial impact of trauma due to socio-political violence<sup>5</sup>, and the short- and long-term mental health effects of eye trauma itself intersect with varying levels of long-term physical disability. As the existing literature shows (Alexander et al., 2001; Lester et al., 2022), we have observed that reactive emotional adjustment to ocular trauma, whether or not produced by violence, involves a particular grieving process associated with both physical recovery and the contextual developments of the post-traumatic period. This is most evident in those survivors who have lost vision in one or both eyes and require complex surgical interventions, adaptation to prostheses and rehabilitation in the functionality of activities of daily living.

For survivors of trauma in the social revolt, various mental health impacts of different types of violence have also been described. These include emotional shock reactions, panic attacks, dissociative states, acute stress reactions, post-traumatic stress reactions, anxiety and depression disorders, chronic pain, substance use and sleep disorders (Movimiento Salud en Resistencia, 2023; Madariaga, 2019), emphasising the tendency for symptoms to become chronic in clinical populations and highlighting neuropsychiatric symptoms secondary to high doses of lead in blood.

All eye trauma survivors report post-traumatic reactions in clinical experience, both in those with permanent visual impairment and in those who have regained vision and function. One consequence of these post-traumatic manifestations has been the four cases of eye trauma victims who have completed suicide and the multiple cases observed by the community of survivors with suicidal ideation or attempts. Suicides have a clear impact on the wider survivor community, reactivating post-traumatic and emotional processes, where emotions of anger and frustration are recurrently expressed, with a tendency to privatise the experience and difficulties in its expression. Survivors are generally emphatic in attributing the causes of suicides to lack of recognition, impunity and insufficient reparation, including the absence or inadequacy of psychological accompaniment and treatment programmes.

Part of the experience and life impact of trauma for eye injury survivors is expressed in a text published four years after the social unrest (CVTO, 2023) by 18 survivors in the form of stories, poetry, songs and illustrations, which reveal a shared

5 *The mental health impact of collective, organised and/or political violence can be further elaborated in de Jong 2003, Goenjian et al 2000, Iñaki et al (eds) 2000, Krug et al. 2002, Madariaga 2002.*

subjectivity expressed in the public space, and also confronts and combats the social emotions of shame and silence (Wyatt, 2023). Significant elements stand out in the narrative: experiences of suffering, life change and recovery; changes in worldview and interpretations in relation to carabineros and the social order they defend in protests; their participation as social actors in demonstrations with collective emotions of hope and change; the importance of immediate and sustained support from others; the grief of learning that they have permanently lost their sight; the impact on family and intimate relationships; the experience of unemployment; personal and community coping mechanisms; the connection of the experience with the dictatorship; the life change with a new subjectivity and identity, among others. Most contextualise their harm and signify it within broader social realities (injustice, repression, resistance). Some fragments are eloquent and share this sense:

“We have not only lost our sight and eyesight. We have lost our emotional stability, jobs, money, education, relationships, a sense of security and, often, hope”.

“There are days when there is hope, there is strength to fight for a better country, one where there is justice, equity and a dignified life. But there are other days when the damage, the trauma and the abandonment are more powerful”.

“Impunity reigns in this country and it is up to us to ensure that living in Chile never again costs us an eye of the face”. (Spanish term for an arm and a leg).

“During the outbreak, I was thinking about the phrase I grew up with, ‘So that never again in Chile’, the phrase that never became flesh, because I saw how we were repeating a history of blood and this time it was my turn to live it”.

In rehabilitation practice, where we accompany both victims of the dictatorship and victims of the social uprising, we can clearly see the common elements of socio-political origin of the traumatic processes and their clinical expression. The linking of the experience of meaning in survivors of ocular trauma with survivors of human rights violations during the dictatorship is frequent, creating a communion and a sense of community between both groups, which is expressed in joint social activities and participation of both groups in demonstrations that seek progress in reparation. In this context, it should be noted that the social uprising mobilised ambivalent emotional reactions in the survivors of the dictatorship; on the one hand, they felt hope and recognition of their social struggles, but on the

other, it led to re-traumatisation. New psycho-emotional experiences frequently developed in previously traumatised people, who were exposed in different ways (in demonstrations, in media) to violence and harm by agents of the State to a new generation. These elements of repetition would constitute one of the bases of the harm to survivors of trauma of socio-political origin becoming chronic (Madariaga, 2019).

*Recovery with a reparative approach as an alternative to psychosocial trauma: Psychosocial elements.*

Recovery from traumatic psychological injury in survivors of eye trauma requires an understanding of the complexity beyond the eye injury, to include medical, sensory rehabilitation, psychological aspects, and those dimensions intimately related to the psychosocial impact, such as the processes of social recognition, the search for justice and reparation for the harm caused. The implications of the contexts of impunity and lack of social recognition for re-traumatisation and its threats to recovery make it necessary to integrate social cues and community and wider societal resources for recovery. In order to address this, CINTRAS uses a model of support that integrates the dimensions of medical-psychological treatment (with its phases of stabilisation/security, resignification and recovery of the life project), psycho-legal support, support and promotion of social cooperation, agency and organisation within the framework of commitment to the human rights movement and principles.

One way of articulating the needs for healing and reparation from the perspective of health and legal teams is the psycho-legal approach, which in general terms is the accompaniment of survivors and their organisation in the processes of seeking justice and reparation (in its different phases<sup>6</sup>), using both psychological and legal knowledge, always trying to ensure that they suffer as little psychological damage as possible in the process. We agree with Pérez-Sales (2023) when he says that this approach “*has had an empowering and reparative effect, as a process guided by the survivor, it means taking back control, facing fears and memories and fighting for dignity and moral reparation*” (p. 13). Within this approach we can highlight two dimensions that have been relevant to reparation. The first has to do with the need for documentation of health, psychological and psychosocial harm (socio-economic, family, occupational and community participation aspects); in this sense, the training and approximation of harm assessments using the principles and guidance of the Istanbul Protocol integrated with a

6 Phases including protection, documentation, counselling for survivors and professionals in the legal and medical-psychological system, preparation for trial, accompaniment at trial and in subsequent proceedings.

psychosocial perspective have enabled the best experiences in this area. Another relevant dimension is the psycho-legal accompaniment itself, generally carried out in the collaboration between the psychologist and the lawyer. The joint work of legal and health professionals in dealing with cases allows for a more comprehensive and coordinated approach.

The role played by survivors' organisations, not only in accompaniment and counselling, but also in the struggle to push for political and institutional changes in order to advance justice and reparation, is crucial in the recovery and re-signification of the experience of survivors of psychosocial trauma. In a context of lack of recognition and impunity, group action by survivors can lead to a process of recovery from associativity (social collaboration), as they become activists for their own recovery in community, fighting for the respect of their own rights or for the rights of people from wider society. This often shifts the sense of suffering and pain from an individual or personal subjectivity towards a positive sense of pain, which enables the social narrative of the experience (de-privatisation), mobilising social support resources, participating in reference and recognition groups, and fostering social action. The dialogue of rehabilitation services with the views and needs of organisations has given special meaning to the participation of eye trauma survivors in their recovery processes.<sup>7</sup> Victims' organisations of social uprising and eye trauma have, like victims' organisations of the dictatorship, been one of the main forces in the struggle for advances in truth, justice and reparation, and share the historical characteristics described by Pérez-Sales (2023) of providing mutual support and empowerment, enabling an organisation that fosters training and awareness, and conducting political advocacy and public awareness raising that includes the pursuit of justice through litigation.

The Chilean and Latin American experience has taught us that rehabilitation and accompaniment of healing processes in survivors of eye and psychosocial trauma due to human rights violations can only be understood if we consider health rehabilitation as part of the overall reparation.<sup>8</sup> In turn, health reparation is inseparable from the search for truth and justice (Brinkmann, 2006), as well as the right to non-repetition and memory. Survi-

vors understand this, which is reflected in the demands made to the State as well as to the services that serve them. Particularly relevant is the existence of physical and psychological rehabilitation services that are comprehensive, continuous, non-discriminatory (by type of victimisation), with sufficient territorial reach, timely and, above all, trauma-sensitive, as well as respectful of dignity and human rights (with "ethical and technical quality" and with a committed therapeutic bond). Integrated reparation services should include support to survivors in their most felt needs for truth and justice, with appropriate expert assessments and professional and human accompaniment in judicial processes. An appropriate way to address this is with integrated health services in their medical-psychological, legal and rehabilitation dimensions, with a family and community approach, including the survivor's vision in the delivery of the service and encouraging their participation and association. As part of comprehensive reparation, rehabilitation services should also support survivors in the various dimensions of satisfaction measures and in the exercise of memory.

Chile maintains its debt to truth, justice and reparation for the survivors of psychosocial trauma caused both by the dictatorship and by the actions of its State agents in the context of the social revolt of 2019, exemplified in this article by the victims of ocular trauma. The struggle for the right to comprehensive reparation is an ethical imperative for the reconstruction of the life projects of those affected and constitutes a cornerstone for overcoming the contexts of impunity that enable repetition.

#### References

- Alexander, D., Kemp, R., Klein, S., & Forrester, J. (2001). Psychiatric sequelae and psychosocial adjustment following ocular trauma: a retrospective pilot study. *British Journal of Ophthalmology*, *85*, 560-562. doi: 10.1136/bjo.85.5.560
- Amnesty International (2020, October). *Eyes on Chile: Violence and command responsibility during the social unrest*. <https://www.amnesty.org/en/documents/amr22/31332020/en/>
- Amnesty International (2023, October 17). Chile: Four years after the social outbreak, impunity and the lack of comprehensive reparation for the victims persist. <https://www.amnesty.org/es/latest/news/2023/10/chile-four-years-social-unrest-impunity/>
- Brinkmann, B. (2006). Trauma psicosocial. La justicia es salud. *Reflexión*, *32*, 24-28. <https://www.cintrass.org/textos/reflexion/r32/traumapsicosocial.doc.pdf> (Psychosocial trauma. Justice is health)
- Cámara de Diputados de Chile. (2021, September). *Informe de la comisión especial investigadora de los actos del gobierno, en particular del Ministerio del Interior y Seguridad Pública, de Carabineros de Chile y de la Policía de Investigaciones de Chile, en el marco del control del orden público, que hayan implicado afectación o violación de los derechos humanos de civiles, en el periodo comprendido entre el día 29 de octubre de 2019 y la fecha en que esta comisión concluya su investigación*.

7 The participation of survivors is a relevant dimension of the rehabilitation standards that the International Council for Victims of Torture as a global anti-torture movement has set for the rehabilitation of survivors. Other standards relevant to the needs of victims are access to justice and independent services, which should be comprehensive, accessible, technically capable, respectful and culturally sensitive (IRCT, 2020).

8 The principles of reparation can be explored further in United Nations General Assembly. (2005)



- (Report of the special commission investigating the acts of the government, in particular of the Ministry of the Interior and Public Security, the Carabineros de Chile and the Policía de Investigaciones de Chile, in the framework of the control of public order, which have implied affectation or violation of the human rights of civilians, in the period between 29 October 2019 and the date on which this commission concludes its investigation). [https://www.camara.cl/verDoc.aspx?prmID=63387&prmTipo=INFORME\\_COMISION](https://www.camara.cl/verDoc.aspx?prmID=63387&prmTipo=INFORME_COMISION)
- Colegio Médico, Regional Santiago. (2020, January 7). Departamento de DD.HH. del Colegio Médico: labor inagotable. <https://www.regionalsantiago.cl/departamento-de-dd-hh-del-colegio-medico-labor-inagotable/> (Department of HH.RR. of the College of physicians: inexhaustible labor)
- Coordinadora de Víctimas de Trauma Ocular. (2023, October). *Ojos: Memoria del estallido. Relatos de sobrevivientes con trauma ocular.* (Eyes: Memory of the uprising. Stories of eye trauma survivors). <https://victimastramaocular.cl/OjosMemoriadeunEstallido.pdf>
- de Jong, J., Komproe, I., & Van Ommeren, M. (2003). Common mental disorders in postconflict settings. *Lancet*, 361(9375), 2128-2130. doi: 10.1016/S0140-6736(03)13692-6
- Goenjian, A., Steinberg, A., Najarian, L., Fairbanks, L., Tashjian, M., & Pynoos, R. (2000). Prospective study of posttraumatic stress, anxiety, and depressive reactions after earthquake and political violence. *Am J Psychiatry*, 157(6), 911-916. doi: 10.1176/appi.ajp.157.6.911
- Human Rights Watch (2019, November 26). Chile: Police reforms needed in the wake of protest. <https://www.hrw.org/news/2019/11/26/chile-police-reforms-needed-wake-protests>
- Instituto Nacional de Derechos Humanos. (n.d.). *Mapa de violaciones a Derechos Humanos.* <https://mapaviolacionesddhh.indh.cl> (Human rights violations map)
- Instituto Nacional de Derechos Humanos. (2019). *Informe Anual sobre la situación de los Derechos Humanos en Chile en el contexto de la crisis social.* <https://www.indh.cl/informe-de-ddbh-en-el-contexto-de-la-crisis-social/> (Annual Report on the situation of Human Rights in Chile in the context of the social crisis)
- Instituto Nacional de Derechos Humanos. (2020, February). *Reporte de datos 18 de febrero de 2020.* <https://www.indh.cl/bb/wp-content/uploads/2020/02/Reporte-de-datos-18-febrero-de-2020.pdf> (Data report 2020, February 18)
- Instituto Nacional de Derechos Humanos. (2021, July). *Balance mensual de querellas.* [https://www.indh.cl/bb/wp-content/uploads/2021/09/BalanceINDH\\_JULIO.pdf](https://www.indh.cl/bb/wp-content/uploads/2021/09/BalanceINDH_JULIO.pdf) (Monthly balance of complaints)
- International Council for Torture Victims. (2020, October). *Global Standards on Rehabilitation of Torture Victims.* [https://irct.org/wp-content/uploads/2022/05/IRCT\\_Global\\_Standards\\_on\\_Rehabilitation\\_of\\_torture\\_victims\\_2020.pdf](https://irct.org/wp-content/uploads/2022/05/IRCT_Global_Standards_on_Rehabilitation_of_torture_victims_2020.pdf)
- Jorquera, P., & Palma, R. (2019). *Estudio de perdigón, Informe final (UTO).*
- Department of Mechanical Engineering, University of Chile. <https://ingenieria.uchile.cl/dam/jcr:a3e7b0a4-e549-42aa-a1e9-a0d794ac7dd3/estudio-de-perdigones-fcfm-u-de-chile-pdf-completo.pdf> (Pellets study, Final report Krug, E., Dahlberg, L., Mercy, J., Zwi, A., & Lozano, R. (2002). *World report on violence and health.* Geneva: World Health Organization. Lester, E., Armstrong, G., & Vranceanu, A. (2022). Emotional recovery after ocular trauma: is there more than meets the eye?. *Eye* 36, 244-245. doi:10.1038/s41433-020-01389-7
- Madariaga, C. (2002). *Trauma psicosocial, trastorno de estrés postraumático y tortura.* Serie Monográfica, 11. Centro de Salud Mental y Derechos Humanos. [https://www.cintras.org/textos/monografias/monog\\_trauma\\_psicosocial\\_espanol.pdf](https://www.cintras.org/textos/monografias/monog_trauma_psicosocial_espanol.pdf) (Psychosocial trauma, post-traumatic stress disorder and torture)
- Madariaga, C. (2018). El trauma social como problema de salud pública en Chile. ¿Es “reparable” la reparación?. *Revista Chilena De Salud Pública*, 22(1), 75-86. doi:10.5354/0719-5281.2018.51045 (Social trauma as a public health problem in Chile. Is reparation “reparable”?)
- Madariaga A., C. (2020). El “Estallido social” y la salud mental de la ciudadanía: Una apreciación desde la experiencia PRAIS. *Revista Chilena De Salud Pública*, 23(2), 146-156. doi:10.5354/0719-5281.2019.56475 (The “social uprising” and the mental health of citizens. An appreciation from the PRAIS experience)
- Markez, I., Fernández, A., & Pérez-Sales P. (eds). (2009). *Violencia y Salud Mental. Salud mental, violencia institucional, estructural, social y colectiva.* Madrid, Spain: Asociación Española de Neuropsiquiatría (Violence and Mental Health. Mental health, institutional, structural, social and collective violence)
- Mellado, B. (2023, October 18). Fiscal Nacional dice que el 80% de las causas relativas al 18-O están cerradas y detalla acciones del Ministerio Público. *Emol.com.* [https://www.emol.com/noticias/Nacional/2023/10/18/1110361\\_fiscal-nacional-18-octubre.html](https://www.emol.com/noticias/Nacional/2023/10/18/1110361_fiscal-nacional-18-octubre.html) (National Prosecutor says that 80% of the cases related to 18-O are closed and details actions of the Public Prosecutor's Office)
- Ministerio de Justicia y Derechos Humanos de Chile. (2023, March). *Informe: Propuestas y recomendaciones para una Reparación Integral de las víctimas de violaciones a los derechos humanos y de violencia institucional durante el estallido social.* <https://programaviddhh.minjusticia.gob.cl/informe-de-recomendaciones-de-mri/> (Report: Proposals and recommendations for comprehensive reparation for victims of human rights violations and institutional violence during the social unrest)
- Ministerio de Salud de Chile. (2022). *Orientación Técnica. Programa Integral de Reparación Ocular - PIRO.* [https://s3.amazonaws.com/gobcl-prod/public\\_files/Campa%C3%B1as/Pacto/programa\\_vto.pdf](https://s3.amazonaws.com/gobcl-prod/public_files/Campa%C3%B1as/Pacto/programa_vto.pdf) (Technical Guidance. Comprehensive Eye Repair Programme - PIRO)
- Ministerio de Salud de Chile. (2023a). *Lineamientos técnico operativos para la medición de plomo en el contexto de programa PACTO.* <https://www.gob.cl/pacto/> (Technical-operational guidelines for lead measurement in the context of the PACTO programme)
- Ministerio de Salud de Chile. (2023b). *Orientación Técnica. Plan de acompañamiento y cuidado a personas víctimas de trauma ocular, lesiones graves y lesionados por perdigones.* PACTO. <https://www.gob.cl/pacto/> (Technical Guidance. Support and care plan for people who are victims of ocular trauma, serious injuries and those injured by pellets)
- Movimiento Salud en Resistencia. (2019). Informe: Movimiento Salud en Resistencia presenta cifras de violaciones a Derechos

- Humanos a manifestantes, las que fueron expuestas ante Comisión de Acusación Constitucional contra Sebastián Piñera. Available in <https://saludpublica.uchile.cl/dam/jcr:ddec66a8-2f74-41a1-8314-a19ed45b96d6/informe-msr-2019-para-esp.pdf>. (Health Movement in Resistance presents numbers of Human Rights violations against protesters, which were presented before the Constitutional Accusation Commission against Sebastián Piñera)
- Movimiento Salud en Resistencia. (2023). "Atención y seguimiento de pacientes afectados por violencia de estado en contexto del estallido social de octubre de 2019 en Santiago de Chile". Retrieved from Cancino, K. (2023, October 17) Estallido: Carabineros disparó casi 2 millones de perdigones y dejó 821 heridos en 3 meses. *El desconcierto*. <https://eldesconcierto.cl> (Patient care and monitoring affected by state violence in the context of the social uprising of October 2019 in Santiago, Chile)
- Pérez-Sales, P. (2023). Survivor-organisation in the search for justice and reparation: a vision from grassroots organising. *Torture* 33(2),4-16. doi: 10.7146/torture.v33i2.139558
- Reynhout, S. (2020). Propiedades balísticas de perdigones antidisturbios "menos letales" y su relación con trauma ocular severo en Chile. *ARS MEDICA J Revista de Ciencias Médicas*, 45(2), 46-54. doi:<https://doi.org/10.11565/arsmed.v45i2.1657> (Ballistic properties of "less-lethal" shotgun pellets and severe ocular trauma in Chile)
- Rodríguez, A., Peña, S., Cavieres, I., Vergara, M., Pérez, M., Campos, M., Peredo, D., Jorquera, P., Palma, R., Cortés, D., López, M., & Morales, S. (2021). Ocular trauma by kinetic impact projectiles during civil unrest in Chile. *Eye*, 35, 1666-1672. doi:10.1038/s41433-020-01146-w
- Spyer, T., & Alvarado, V. (2021) El Estallido Social en Chile: ¿rumbo a un Nuevo Constitucionalismo? *Revista Katálysis*, 24(1), 43-52. doi: <https://doi.org/10.1590/1982-0259.2021.e73555> (The Chilean Social Outbreak: towards a New Constitutionalism?)
- United Nations General Assembly. (2005). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. UN Doc A/60/509/Add.1
- United Nations Office of the High Commissioner for Human Rights. (2019, November). Report of the Mission to Chile from 30 October to 22 November 2019. [https://www.ohchr.org/sites/default/files/Documents/Countries/CL/Report\\_Chile\\_2019\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/CL/Report_Chile_2019_EN.pdf)
- Weibel, M., & Jara, M. (2020, August 18). Carabineros revela que disparó 104 mil tiros de escopeta en las primeras dos semanas del estallido social. *CIPER*. <https://www.ciperchile.cl/2020/08/18/carabineros-revela-que-disparo-104-mil-tiros-de-escopeta-en-las-primeras-dos-semanas-del-estallido-social/#:~:text=En%20respuesta%20a%20una%20sol-icitud,126%20v%C3%ADctimas%20de%20lesiones%20oculares> (Carabineros reveal that they fired 104,000 shotgun shots in the first two weeks of the social outbreak)
- Weibel, M (2021, March 12). Fiscalía ya cerró sin formalizados el 46% de las causas por violaciones de DD.HH. ocurridas en el estallido social: 3.050 casos. *CIPER*. <https://www.ciperchile.cl/2021/03/12/fiscalia-ya-cerro-sin-formalizados-el-46-de-las-causas-por-violaciones-de-dd-hh-ocurridas-en-el-estallido-social-3-050-casos/> (The prosecutor's office has already closed 46% of the cases for human rights violations that occurred in the social outbreak without formalizing them: 3,050 cases)
- Wyatt, S. (2023). What is 'agency' in torture and trauma recovery? An inquiry into the properties and explanations of the concept of agency and it's impacts. *Torture* 33(2),17-44. doi:10.7146/torture.v33i2.137064

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# The Movement in Resistance against Eye Aggressions by MOCAO as a social movement for justice, reparation and the right to peace and freedom in Colombia

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1 MOCAO

## Summary

The collective action of MOCAO, *Movimiento en resistencia contra las agresiones oculares del ESMAD* (Escuadrón Móvil Antidisturbios) is a social strategy to demand access to justice and the fulfilment of guarantees of reparation and non-repetition in Colombia. A brief account of significant events in our trajectory as a social movement is presented, together with our letter of petitions to the national government as victims and survivors of ocular aggressions in the framework of police violence. Although ESMAD today has been reformed under the name of the Unit for Dialogue and Maintenance of Order (UNDMO), we consider that there have not yet been structural changes to ensure that its function is related to protecting the constitutional right to social protest.

**Keywords:** Collective action, social movement, police, torture, Colombia, reparation.

## Introduction

In this article we propose to address, from our experience as victims and survivors of eye trauma, the actions carried out by the Mobile Anti-Riot Squadron (ESMAD) of the national police in Colombia through an analysis of its trajectory as an agency attached to the Ministry of Defence of the nation.

The ESMAD was established as a body of the National Police specialised in agglomerations, and has now been renamed as the Unit for Dialogue and Maintenance of Order (UNDMO)<sup>1</sup>. According to the website of the Colombian National Police, the functions of the new UNDMO include “guiding the deployment of police activity to control disturbances, riots or

any other criminal, violent or anti-coexistence activity resulting from the agglomeration of people, with the aim of maintaining or restoring conditions of public order, security and coexistence” and “guiding the application of human rights standards, within the framework of the mission of the Dialogue and Maintenance of Order Unit”. UNDMO was created in 2023 as an initiative of the new government of Gustavo Petro, driven by an idea of renovation and modernisation of the police force, based on the peaceful treatment of social protest and respect and care for human rights. However, civil society organisations have expressed their concern that these changes are only rhetorical and are not reflected in a change in the treatment of social protest. Thus, in a June 2023 communiqué from the *Mesa por la Reforma Policial* (MFP) (2023), of which Mocaio is a member, we expressed deep concern “*about the internal transformation process of the National Police, which has been characterised as endogenous and cosmetic, and which does not favour integral transformations and real debates about the role of the police in our democracy and in peace-building scenarios*”<sup>2</sup>.

According to Resolution 1091 that established the UNDMO, the main difference between the UNDMO and the ESMAD is that the former will have dialogue units that seek to mediate with the population during the course of anti-riot operations. As of the date of this article, the presence of such a dialogue group has not yet been manifested in any police action. To the contrary, the violent actions of the former ESMAD have been systematic, with practices of physical violence and acts of torture, as reflected in the reports of human rights organisations<sup>3</sup>. It is worth highlighting the reports of national

1 Ministry of Defence Resolution 1091/2023

2 Bogota. MFP. 13 June 2023. <https://ddhhcolombia.org.co/2023/06/14/transformacion-esmad-no-fue-estructural/>

3 Temblores ONG, PAIIS Uniandes (2021). *Shots fired. Traumas to the eyes during the national strike*. <https://www.temblores.org/publicaciones>

Inter-American Commission on Human Rights (2021)	The Inter-American Commission expresses its firm condemnation and rejection of the high levels of violence registered in the context of social protest, both that caused by the excessive use of force by the public security forces and that provoked by groups outside the protest itself.(...) The IACHR noted with concern that cases related to alleged human rights violations committed by the police, particularly by the ESMAD, are being heard by the military criminal justice system, as they are considered to fall under the notion of “acts of service”.
Human Rights Watch (2023)	“Police committed serious human rights violations in response to largely peaceful protests in Colombia since 2019. Efforts to investigate and prosecute those responsible have been limited. Human Rights Watch examined evidence linking police to 25 killings of protesters and bystanders, as well as dozens of injuries and arbitrary arrests, in the context of peaceful demonstrations in 2012. As of October 2022, four police officers have been charged and five others charged in connection with the killings. No one has been charged in relation to the injuries or arbitrary arrests.”
Amnesty International (2022 -3)	“In May, Indigenous leader Luis Tombé was shot dead during an environmental protest in the town of Miranda, Cauca department, when members of the Mobile Anti-Riot Squad (ESMAD) opened fire on protesters calling for the release of colleagues who had been detained by the police. In June, the civil society platform Campaña Defender la Libertad criticized the excessive use of force against demonstrators by ESMAD, which had caused eye trauma to one person at a protest at the District University of Bogotá calling for more resources and improvement of the university’s infrastructure.”

organisations such as Temblores ONG which have documented systematic practices of violence in social protest scenarios. On the one hand, 103 acts of eye trauma were documented in the context of the national strike of 2021, and 40 homicides allegedly committed by the National Police were identified<sup>5</sup>. The following table reflects particularly relevant excerpts from reports by international organisations.

**Political and Legislative Context**

The 1991 Constitution represented a significant advance in terms of rights and the exercise of freedoms in Colombia. Social protest as a right is included in Article 37 of the Constitution: “Any part of the people may assemble and demonstrate publicly and peacefully. Only the law may expressly establish the cases in which the exercise of this right may be limited”. However, in 1999, the General Directorate of the Police created the ESMAD<sup>4</sup>. Since its creation, murders, torture and disappearances have been attributed to them. The report *Silencio Oficial*<sup>5</sup> by Temblores ONG documented at least 34 homicides allegedly committed by the ESMAD in its first 20 years of existence, a figure that does not include homicides committed during the social

unrest. The research *Represión en la Mira (2021)* by Defender la Libertad, Mocao and CAPS describes how since the creation of ESMAD in 1999, until June 2022, 169 cases of eye injuries have been documented in the context of social protests in Colombia. It is important to mention that the patterns identified in the cases documented in 2021 are an extension and maximisation of what happened from 1999 to 2020, i.e. previously existing patterns that are reproduced. In 82% of the cases in which the age was known, these were young people from popular sectors who exercised their right to social protest.

In Colombia, both denunciation and access to justice are difficult due to fear of reprisals and the encounter with a legal system that does not respond to social, administrative and constitutional compliance needs<sup>6</sup>. This leads to many cases that have not yet been clarified. However, there are some notable

4 Transitional Directive 0205 of 24 February 1999

5 Temblores ONG (2020). *Official Silence: a stunned cry for justice on the occasion of 20 years of ESMAD’s existence*. <https://tembloresong.gumroad.com/l/silencio-oficial?layout=profile>

6 These cases must be seen in the context of overall police violence and impunity. The report *Bolillo, Dios y Patria* by Temblores ONG (2024) documents 350 homicides by the security forces between 2020 and 2022. In the first half of 2023 alone, there were 68 cases of physical violence, 12 cases of homicidal violence, and 5 cases of sexual violence. More than 40% of cases of physical violence by the police occur in everyday contexts, such as moving around and inhabiting public spaces. Sexual violence by the police is registered in detention centres, such as the Police’s Immediate Attention Centres (CAI). In the face of all this, the same report states that impunity for all types of police violence stands at 96%, and in the specific case of physical and sexual violence, impunity is 100%.

cases that have been prosecuted, such as that of Nicolás Neira<sup>7</sup>, who was murdered by the Squadron in 2005 during a demonstration commemorating Workers' Day in Bogotá. These isolated cases should not be misleading with regard to the cycles of impunity and repetition of victimising acts by the National Police and ESMAD / UNDMO. Thus, for example, the death of Dilan Cruz on 23 November 2019<sup>8</sup>. The various evidence, including a detailed analysis by the organisation Forensic Architecture, shows that Manuel Cubillos, captain of ESMAD killed Dilan in a premeditated manner, with a cold-blooded shot against a young man who, with his back turned, was seeking refuge from a group of police officers who were attacking a demonstration by residents. However, to this day, the case of Dilan Cruz has still not had a single criminal conviction for the responsibility of the State in these events.

Against this background, it is necessary to read the way in which this squadron, and the National Police, gave war-like treatment to social protest in the years of the social outbreak of 2021 and all the deaths and eye mutilations that ensued. As the IACHR points out in its report, the ESMAD acted without control, without any mechanism to verify its actions and with total impunity (IACHR, 2021).

### **The organising process, the notion of victim and survivor and the importance of collective action and social mobilisation.**

MOCAO emerged on the 9<sup>th</sup> of April of 2021 in the midst of the protests that took place in the country over the various tax reforms proposed by the government of Ivan Duque. Since its foundation, its work has focused on the recognition that victims and survivors of ocular aggression deserve from the Colombian State. From being a small group, MOCAO has today become a broad territorial network that encompasses and supports young people in a large part of the country.

As a result of the dirty and brutal war that has ravaged Colombia for years, social movements have been persecuted, attacked, threatened, singled out and been targeted for stigma-

tisation, destruction and assassination. All these violent actions against human rights defenders and civil rights defenders are framed in a notion of a violent society and a dispute for power, where some economic and military elites can use the state, society and the community according to their particular interests. The national strike of 2021 was initiated, among many things, because of an unfair and arbitrary tax reform that benefited the economic elites of the country. The main characteristic is that although there may be some relatively institutionalised structures (such as the National Strike Committee) it was a systemic movement, which shook all sectors and social strata: social and popular movements, youth, peasants and workers, including trade unions, territorial movements, indigenous and Afro-Colombian peoples, Raizal and Palenquero, and urban communities and neighbourhood organisations, and, from there, the points of resistance were key, as well as the feminist and transgender movement, among others.<sup>9</sup>

The cruel and significant displays of violence exercised in the 2021 demonstrations by the security forces against civil society, which went around the world, marked a turning point in the public recognition and visibility of the violent treatment given to social protest in Colombia. Media pressure, the use of social networks and the support of the international community have led to progress in, for now, the recognition of these acts as crimes against humanity. Some of the people who make up this movement state that before the events of the social outbreak of 2021, exposing and denouncing the ESMAD and the police forces was a motive for forced disappearance, torture, harassment and persecution<sup>10</sup>. This is why the work of social organisations, human rights defenders and civil society in general who seek justice, peace, freedom and constitutional guarantees is so significant, considering that the State has the obligation to provide security in the exercise of collective actions. The coordination and support of international organisations is, in this sense, fundamental.

It is in the face of this reality that the notion of victim and survivor takes on a very significant relevance. Contrary to what some sectors in the country may believe, the victim is also a victim of police forces, which makes them a victim of the state,

7 The case of Nicolás Neira is one of the most significant in the struggle for human rights in Colombia. His case is currently being sought to be recognised as a crime against humanity. In 2011 the 37<sup>th</sup> Administrative Court of Bogotá condemned the State for action and omission, and ordered financial reparation for his family. Source: "Nicolás Neira 16 years in your memory". <https://www.justiciaypazcolombia.com/nicolas-neira/>

8 *Four years after Dilan Cruz was shot: Colombia looks in a broken mirror* (2023), El País. <https://elpais.com/america-colombia/2023-11-23/cuatro-anos-del-disparo-a-dilan-cruz-colombia-se-mira-en-un-espejo-roto.html>.

9 Estrada Álvarez, Jiménez Martín and Puello Socarrás (2023) *La rebelión social y popular de 2021 en Colombia, elementos para su comprensión*. Pg 30

10 Yuri Neira, Nicolás Neira's father, had to flee the country due to threats received as a result of seeking justice for the murder of his son. *Yuri Neira: A face of the struggle of victims of state crimes* (2018). El Espectador. <https://www.elespectador.com/colombia-20/conflicto/yuri-neira-un-rostro-de-la-lucha-de-las-victimas-de-crimenes-de-articulo-articulo/>

which failed in its work and caused them significant harm. This is evident in the cases of Daniel Bernal and Cristian Zárate, members of MOCAO who have been formally recognised that ESMAD acted unlawfully and recklessly. However, it could be positive for the victim that this classification always contains the nuance of “survivor”, since surviving implies an active action of overcoming the adverse situation. In this way, MOCAO is a social movement of victims who survived, who have been overcoming and are increasingly overcoming their difficulties in a more significant way, weaving networks within and outside their territories and the country.

We do not want to end this section without mentioning the importance of exercising the right to social protest: expressing one’s voice, denouncing what is illegal and fighting against what is unjust cannot and should never have a fatal outcome. And, in turn, it is the obligation of states to guarantee access to these rights and to assume their responsibilities towards their citizens.

Currently MOCAO continues to work on actions based on the demand for access to justice, respect and care for human rights, historical memory, art and culture. In 2023, we held the first national meeting on Eye Trauma Victims in the city of Bogotá and we are currently working on the organisation of the first international meeting of Victims and Survivors of Eye Aggression. We are also carrying out memory and theatre work<sup>11</sup>.

### **Progress, initiatives and difficulties in the psychosocial treatment of victims, survivors and their families.**

Police violence and eye assaults are events that, due to their magnitude, cause after-effects that accompany the affected individuals and their families for the rest of their lives. The consequences of shootings, attacks, sexual abuse, discrimination and other forms of violence affect both in physical terms, due to injuries, and in terms of psychosocial development, due to the impact on the life project.

These difficulties are exacerbated by the situation of mental health and access to health in Colombia, with overcrowded hospitals, state-run medical services with a very low level of efficiency in medical care, and daily inequalities, violence and corruption. In the face of all this, it is the initiatives of the surviving victims and their families, together with the support of some organisations that, out of good will and vocation, defend and care for rights, that make it possible to move forward in such challenging scenario. Eye injuries leave a series of sequelae that in most cases are progressive and worsen when there is

poor attention and care of the pathologies. The after-effects are multiple: cognitive, psychological, physiological, motorical, and social. The surviving victims live their lives, but they are burdened with the after-effects of torture. Many testimonies of victims/survivors of eye assault and police violence report symptoms of anxiety, post-traumatic stress disorder, panic, social isolation and apathy, sometimes in all areas of life, but often specifically with regard to social and collective mobilisation. In many cases, this transcends into the most intimate spheres, hindering contact with family and friends, as well as a negative impact on self-perception, developing intense feelings of sadness, anger or shame. Therefore, the consequences of these acts of torture also represent public health issues.

But beyond this, we consider that the ocular aggressions are acts of torture outside of detention<sup>12</sup> (MOCAO, 2023) since we observe intentionality in the injuries and the production of severe physical and psychological suffering by agents of the State. As collectives that have been victims of torture by the police, we ask that the State guarantee the rehabilitation and reparation of victims/survivors with models that are comprehensive, not revictimising, promoted by institutions that value diversity, respect human rights and comply with constitutional guarantees. These are fundamental elements if progress is to be made in terms of peacebuilding in the face of the crimes committed by the Colombian State forces. Likewise, the culture of “justification” of the violence exercised by official bodies must be exposed and denounced, since the media constitute spaces where stigmatising messages against youth and the right to protest are disseminated, and which also affect the way in which they must deal with the aftermath and their mental health.

Psychosocial treatment must also include guarantees of non-repetition, a progressive modification and eventual dismantling of ESMAD/UNDMO and the construction of a society that, from the grassroots, does not act aggressively in the face of protests and demands from the population.

### **Context of actions in legal terms and the worrying impunity in criminal matters**

One of the great current legal challenges in relation to eye assaults is the significant number of cases that reach the military criminal justice system<sup>13</sup> in Colombia, which not only are met

11 Teatro la Candelaria under the direction of Patricia Ariza, Gabriela Pardo, Franko Vidal and Nohra González Reyes.

12 CSPP, MOCAO, CAPS (2022). <https://defenderlalibertad.com/wp-content/uploads/2023/03/Represion-en-la-mira-final-1-1.pdf>.

13 In Colombia, the National Police is part of the security forces and crimes committed by the security forces are tried by the military criminal justice system. Many cases of human rights violations committed by the National Police are understood

with impunity, but in the majority of cases, the files get lost or disappear. This is despite the fact that, according to the Constitution, the police is a civilian body<sup>14</sup>. However, the police is attached to the Ministry of Defence, as is the army, which has led to its covert militarisation. The IACHR has repeatedly recommended that it be attached to another Ministry in order to guarantee a civilian and human rights approach and to avoid any possibility of military perspectives in police actions, applying the so-called criminal law of the enemy or the principles of war to the citizenry. MOCAO, together with other international organisations and human rights organisations, insist that cases of eye assaults be dealt with in the ordinary justice system and not in the military criminal justice system.

In criminal proceedings, impunity is absolute. In a few cases the evidence has been so clear that the justice system has had to recognise the responsibility of the ESMAD, as in the aforementioned case of Daniel Antonio Bernal<sup>15</sup>, injured in 2016, shot with a tear gas grenade in his face directly, at a distance of less than three metres, causing him to lose sight in his left eye<sup>16</sup>. Subsequent to this ruling that same year, a judge of the same administrative circuit recognised the right of Cristián Zárate<sup>17</sup>, injured in similar circumstances at the National University in 2019. It is important to point out that as a result of these sentences, there were sectors of society that justified the ESMAD, revictimising and judging both survivors. In Daniel's case, he was the target of insults and threats on social networks which lead to him leaving the country for own protection.

In social terms, the sentences did not represent a significant advance in the perception of demonstrators in social media and by certain sectors, nor on the need to educate on the right to protest.

Currently, several members of the movement, whom we do not mention here out of respect for their privacy and for security reasons, are taking legal action against the State, but they all conclude that criminal action against the agents is null and void

or impossible due to impunity and the danger it poses to their own security because of the connections between the police forces and paramilitarism in Colombia. According to the international mission of SOS Colombia, the paramilitary groups “in some cases, acted in collusion with the security forces” and there were armed civilians who perpetrated violent actions. These connections put the victim at risk when denouncing the aggressions<sup>18</sup>. The support of the international community and the coordination between social organisations in legal actions and mutual support is fundamental in this sense.

### Findings and requests from the movement.

MOCAO is made up of young people from the social outburst. However, there is also a wide diversity of people in our movement who are affected by this type of violence in other contexts. Young people are more likely to be violated by law enforcement. This makes the cycle of violence, repetition and re-victimisation very difficult to break. For this reason, MOCAO demands that the Colombian State<sup>19</sup>

1. The immediate cessation of human rights violations by the National Police and ESMAD / UNMDO against citizens in the context of social protest, especially eye injuries.
2. Issue a public apology and generate commitments regarding the non-repetition of human rights violations and eye injuries.
3. Implement the necessary measures to guarantee justice and reparation for all victims of human rights violations in social protest, and especially for victims of eye injuries.
4. Carry out due investigations of members of the National Police, ESMAD / UNDMO agents and armed civilians, taking into account the chain of command in the exercise of their functions
5. Promote a structural reform of the National Police, with the binding participation of civil society, and especially of the victims of violence exercised by National Police agents. Ultimately, dismantle the ESMAD / UNDMO, as it is a special unit that has historically violated the human rights of the Colombian population.
6. We ask the Colombian State to abide by the recommendations issued by the Inter-American Commission on Human Rights on 7 July 2021, which address issues such as the disproportionate use of force and the use of “less lethal” weapons, ensuring compliance with the principles of pro-

as “acts of service” (see Temblores ONG “El Estado de la Impunidad” <https://tembloresong.gumroad.com/l/el-estado-de-la-impunidad?layout=profile>).

14 Article 218 of the Constitution

15 <https://www.eltiempo.com/justicia/cortes/esmad-policia-debera-responder-por-estudiante-que-perdio-u-n-oculo-760092>

16 The Bogotá circuit administrative court ordered compensation and the 2023 ruling is considered the first in Colombia in which a judge clearly held Captain Julian Cetina Rodríguez and the ESMAD responsible for actions that violated the principles of precaution and proportionality, and whose actions were excessive, unjust and imprudent.

17 <https://twitter.com/ZarateRudolf/status/1704227601424814577/photo/1>

18 <https://www.swissinfo.ch/spa/polic%C3%ADa-colombiana-dio-a-protesta-social-tratamiento-de-war-dice-misi%C3%B3n/47010722>

19 Full text in the report “Repression in the Spotlight”.

portionality, legality and necessity that obey international regulations.

7. Inform citizens about the protocols for action and the possible health impacts of the use of “less lethal” weapons during protests and withdraw weapons that put the lives and integrity of demonstrators at risk.
8. Creation of a specialised programme focused on the care of victims of eye injuries, with a non-revictimising and humanising character, and with adequate funding. In this aspect we insist on a differential programme to PAPSIVI<sup>20</sup>(as this focuses on victims of the armed conflict) that treats victims of police violence -victims of the State, the Police and ESMAD.

Furthermore, it is necessary to improve the coordination of organisations within Colombia, but above all to articulate international response networks given that there are situations of eye injuries in many countries globally.

Finally, it is also important to call on society in general not to discriminate against victims of eye injuries and any other aggression that has caused them medical and psychosocial damage. It is necessary to strengthen actions to raise social awareness on this issue.

### Conclusions

The aim of this text is to delve into ocular aggression as a practice that is part of the phenomenon of police violence, a state crime that involves acts of torture with serious psychosocial consequences for the surviving victims and their families, as well as for society in general. In addition to this, the dimension of the victim-survivor has been explored through the empowerment that social, justice and memory processes produce in civil society with repercussions for the transformation of the state and police forces. In this regard, strategic litigation has been fundamental to the demand for rights and to establish points of rapprochement to the seemingly impregnable structure of impunity with which police forces still operate in Colombia. It is clear that urgent reform is needed to guarantee the security of citizens, access to and full exercise of rights, guarantees of reparation, memory and non-repetition, and open dialogue between the security forces and citizens. In this, social movements and

groups of victims and survivors play a fundamental role and it is crucial that their work is adequately protected.

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### References

- Amnesty International. Report 2022 /23. Available at: <https://www.amnesty.org/es/documents/pol10/5670/2023/es/>
- Inter-American Court of Human Rights, *Observations and recommendations*, Working visit to Colombia (2021) Available at [https://www.oas.org/es/cidh/informes/pdfs/ObservacionesVisita\\_cidh\\_Colombia\\_spA.pdf](https://www.oas.org/es/cidh/informes/pdfs/ObservacionesVisita_cidh_Colombia_spA.pdf)
- Inter-Church Justice and Peace Commission. “Nicolás Neira 16 years in your memory” (2021) Available at <https://www.justiciaypazcolombia.com/nicolas-neira/>
- Human Rights Watch. World Report 2023. Available at <https://www.hrw.org/es/world-report/2023/country-chapters/colombia#19005b>
- Temblores ONG, et al. *Bolillo, Dios y Patria* (2024) Available at : <https://www.temblores.org/publicaciones>
- Temblores ONG, et al. *The State of Impunity* (2023). Available at: <https://tembloresong.gumroad.com/1/el-estado-de-la-impunidad?layout=profile>
- Temblores ONG, et al. *Silencio oficial: un aturdido grito de justicia a propósito de los 20 años del ESMAD*. Available at: <https://tembloresong.gumroad.com/1/silencio-oficial?layout=profile>
- Temblores ONG, et al. *Shots fired: eye trauma in the context of the national strike*. Available at: <https://tembloresong.gumroad.com/1/tiros-a-la-vista?layout=profile>
- MOCAO, et al. *Repression in the spotlight. Eye injuries in the context of protests in Colombia*. Digital.(2023) Available at: <https://defenderlalibertad.com/wp-content/uploads/2023/03/Repression-en-la-mira-final-1-1.pdf>
- Roundtable for Police Reform, *Joint Communiqué of 13 June 2023*. Available at <https://coeuropa.org.co/transformacion-esmad-no-fue-estructural/>.
- National Police of Colombia. *Funciones del ESMAD*. (n,f) Available at <https://www.policia.gov.co/especializados/antidisturbios/funciones>

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20 Programme of Psychosocial Care and Comprehensive Health Care for Victims of the Ministry of Health and Social Protection.



## 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.

### References

- Amnesty International (2022). *“They hit him on the head to find out if he was dead”. Evidence of crimes under international law committed by Spain and Morocco at the Melilla border.* United Kingdom. <https://www.amnesty.org/es/documents/mde29/6249/2022/es/>
- BBC. (2017, October 2). Catalonia referendum: Violence as police block voting. <https://www.bbc.com/news/av/world-europe-41463955>
- Caballero, Á. (2021, November 27). Why are police and civil guards demonstrating against the reform of the ‘gag law’? *RTVE*. <https://www.rtve.es/noticias/20211127/claves-manifestacion-policias-reforma-ley-mordaza/2234453.shtml>
- Colomer, Í. (2020, October 15). La BRIMO incorporará un nou número d’agent per tal de millorar-ne la identificació. *Betevé*. <https://beteve.cat/societat/mossos-esquadra-brimo-numero-identificacio-uniforme/>
- Europa Press Catalonia (2021, July 21). The Parliament approves the creation of a study commission on the police and public order model. <https://www.europapress.es/catalunya/noticia-parlament-aprueba-crear-comision-estudio-modelo-policial-orden-publico-20210721185115.html>
- Europa Press Catalonia (2022, December 2). The Parliament approves the revision of the foam but rejects an external control of the Mossos. <https://www.europapress.es/catalunya/noticia-parlament-aprueba-revisar-foam-rechaza-control-externo-mossos-20221202141812.html>
- Europa Press National (2023, September 18). The Barcelona High Court confirms the trial of 5 police officers for the loss of an eye of Roger Español on 1-O. Europa Press National. <https://www.europapress.es/nacional/noticia-audiencia-barcelona-confirma-juicio-policias-perdida-ojo-roger-espanol-20230918145445.html>
- Generalitat de Catalunya (2008, March 11). Interior regulates for the first time in a global way the use of weapons and police tools by the Mossos d’Esquadra. Govern.cat. <https://govern.cat/salaprensa/notes-premsa/92850/interior-regula-cop-forma-global-us-armes-estris-policials-part-dels-mossos-esquadra>
- Gómez, I. (2022, April 9). Ten years after the death of Ínigo Cabacas, his parents say they are still “bleeding to death”. *EITB.eus*. <https://www.eitb.eus/es/noticias/sociedad/videos/detalle/8777798/video-diez-anos-despues-de-muerte-de-inigo-cabacas-sus-padres-dicen-seguir-desangrados/b/>
- Írídia and Novact (2021). *Stop Rubber Bullets*. Barcelona. Available at: [https://iridia.cat/wp-content/uploads/2021/06/Informe-Balas-de-Goma\\_V2.pdf](https://iridia.cat/wp-content/uploads/2021/06/Informe-Balas-de-Goma_V2.pdf)
- Írídia, Novact and Rights International Spain (2022). *Transparencia y rendición de cuentas de los cuerpos policiales en el Estado español*. Barcelona. Available at: <https://iridia.cat/wp-content/uploads/2022/10/Transparencia-y-mecanismos-de-control-de-los-cuerpos-policiales-en-el-Estado-espanol-INFORME.pdf>
- Írídia (2023). Foam: not accurate, not traceable, potentially lethal projectiles. In Írídia, *Report on institutional violence 2022* (pp. 42-45). Available at: <https://iridia.cat/en/publications/informe-sobre-violencia-institucional-2022/>
- Maldita.es (2019, October 17) The use of rubber balls in Catalonia: banned since 2014, but only affects the Mossos; National Police and Guardia Civil can continue to use them. Madrid. Available at: [https://maldita.es/malditaeexplica/20191017/el-uso-de-pelotas-de-goma-en-cataluna-esta-prohibido-desde-2014-pero-solo-afecta-a-los-mossos-policia-nacional-y-la-guardia-civil-pueden-seguir-usandolas/Martín, J. V. \(2022, September 28\). La campaña contra las balas de goma llega al Congreso con 200 colectivos reclamando su prohibición. Público. https://www.publico.es/sociedad/campana-balas-goma-llega-congreso-200-colectivos-reclamando-prohibicion.html](https://maldita.es/malditaeexplica/20191017/el-uso-de-pelotas-de-goma-en-cataluna-esta-prohibido-desde-2014-pero-solo-afecta-a-los-mossos-policia-nacional-y-la-guardia-civil-pueden-seguir-usandolas/Martín, J. V. (2022, September 28). La campaña contra las balas de goma llega al Congreso con 200 colectivos reclamando su prohibición. Público. https://www.publico.es/sociedad/campana-balas-goma-llega-congreso-200-colectivos-reclamando-prohibicion.html)
- Office of the High Commissioner for Human Rights (OHCHR) (2020). *United Nations Human Rights Guidance on the Use of Less Lethal Weapons in Policing*.
- Open Society Justice Initiative (2018). *Strategic Litigation Impacts, Insights from global experience*. New York: GHP Media, Inc.
- Solé Altimira, O. (2017, November 14). El herido en el ojo por bala de goma el 1-O pide al juez que identifique al agente de la Policía que le disparó. *elDiario.es*. [https://www.eldiario.es/catalunya/politica/herido-identificar-escopetero-policia-disparo\\_1\\_3081274.html](https://www.eldiario.es/catalunya/politica/herido-identificar-escopetero-policia-disparo_1_3081274.html)
- Solé Altimira, O. (2020, February 4). The Mossos identify a national police officer for wounding a young man in the eye with a rubber bullet on 1-O. *elDiario.es*. [https://www.eldiario.es/catalunya/sociedad/mossos-identifican-policia-nacional-disparo\\_1\\_1148502.html](https://www.eldiario.es/catalunya/sociedad/mossos-identifican-policia-nacional-disparo_1_1148502.html)
- Solé Altimira, O. and Puente, A. (2021, May 12). El protocolo íntegro sobre las balas de “foam” que los Mossos ocultan al Parlament. *elDiario.es*. [https://www.eldiario.es/catalunya/protocolo-integro-balas-foam-mossos-ocultan-parlament\\_1\\_7927138.html](https://www.eldiario.es/catalunya/protocolo-integro-balas-foam-mossos-ocultan-parlament_1_7927138.html)
- Solé Altimira, O. (2022, November 11). Two experts rule that the “foam” bullets used by the Mossos violate UN regulations. *elDiario.es*. [https://www.eldiario.es/catalunya/expertos-dictaminan-balas-foam-mossos-vulneran-normativa-naciones-unidas\\_1\\_9700485.html](https://www.eldiario.es/catalunya/expertos-dictaminan-balas-foam-mossos-vulneran-normativa-naciones-unidas_1_9700485.html)
- Stop Rubber Bullets (2013). *The use of rubber bullets by the Mobile Brigade of the Mossos d’Esquadra (BRIMO)*. Barcelona. Available at: [https://issuu.com/stopbalasdegoma/docs/informe-sbg2013\\_es/17](https://issuu.com/stopbalasdegoma/docs/informe-sbg2013_es/17)
- Stop Rubber Bullets (2021). *Stop Rubber Bullets*. <https://stopbalasdegoma.wordpress.com/>
- Sust, T. (2012, December 21). 2,500 eyes for Ester Quintana. *El Periódico*. <https://www.elperiodico.com/es/>

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sociedad/20121221/2500-ojos-ester-quintana-2278796  
Office of the United Nations High Commissioner for Human Rights (OHCHR). (2020). *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, <https://www.ohchr.org/en/publications/policy-and-methodological-publications/united-nations-human-rights-guidance-less>Vargas Martín, J. (2022, September 28). La campaña contra las balas de goma llega al Congreso con 200 colectivos reclamando su

prohibición. *Público*. Available at: <https://www.publico.es/sociedad/campana-balas-goma-llega-congreso-200-colectivos-reclamando-prohibicion.html>

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# Ill-treatment<sup>1</sup> in the Chilean prison system – an analysis of reports presented by the National Institute of Human Rights (INDH) and their handling by the legal actors

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## Abstract<sup>1</sup>

*Introduction:* Prisons in Latin America are often described as violent and lawless places. This article analyses the Chilean case. We want to find out how complaints of ill-treatment are investigated if the victim is in prison. Our hypothesis is that the response to the phenomenon, both in the prosecution of the perpetrators and in the protection of its victims, does not take into consideration the guidelines established in international standards, especially those contained in the Istanbul Protocol. *Methods:* We analysed a total of 124 complaints of ill-treatment filed by the Chilean National Human Rights Institute (INDH). *Results:* An excessive amount of time elapses between the alleged ill treatment, the filing of complaints, the use of protective measures, and the termination of the cases. There are serious deficiencies in the investigations carried out by the Public Prosecutor's Office, and therefore, most of the complaints are not clarified and end up being shelved. We conclude that, through both the actions of the judges and the prosecutors in the processing of the complaints, when it comes to investigating acts of ill-treatment inside Chilean prisons, the standards of the Istanbul Protocol are not met.

**Keywords:** torture; ill-treatment in prison; Istanbul Protocol

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## Introduction

The Chilean civil-military dictatorship (1973-1990) showed that the border of the prohibition of torture was movable. The dignity of those who held power was worth more than the dignity of those who were deprived of it. We find evidence of this in the report of the National Commission on Political Prisoners and Torture - also known as the "Valech Commission"<sup>2</sup> (hereinafter Valech Report). The report contains a detailed analy-

sis of the different forms of torture used during the last Chilean dictatorship.

Even though this authoritarian period ended more than 30 years ago, its ramifications can still be felt. As the United Nations Special Rapporteur on Torture Alice Jill Edwards put it: "*The period of Pinochet and the torture that was perpetrated left deep imprints on the bodies and minds of all Chileans, even though many of them are now born since the dictatorship and have no living memory of it*" (United Nations, 2023, p. 14).

The transition to a government ruled by democratic principles did not mean that automatically all forms of ill-treatment

2 In honour of Bishop Sergio Valech (1927-2010) who chaired the Commission.

disappeared. Chile is still struggling to move towards a modern state based on solidarity and democratic rule of law. This requires overcoming the traces of institutional culture that still today allow the practices of ill-treatment to be protected in various State institutions.

In this context, prisons<sup>3</sup> are the place where the state deploys its maximum intensity of power and resorts to force in its most diverse expressions. A central element of protection is the absolute prohibition of torture or other forms of cruel, inhuman, or degrading treatment. It is the duty of the state and its agents to guarantee security inside prisons. In addition, the prison system must be prevented from aggravating the “inherent suffering” of imprisonment (Nelson Mandela Rules, 2015, Rule 3). Nevertheless, prison conditions in Chile are seriously lacking in infrastructure, health care, social reinsertion, among others (INDH, 2017, 2018; UDP, 2015; CPT, 2022, p. 15; United Nations, 2023). In some prisons, and according to the United Nations Special Rapporteur on Torture Alice Jill Edwards, the lack of adequate outdoor space and over-crowded dormitory rooms, can be considered inhuman or degrading treatment. (United Nations, 2023, p. 19).

One of the most serious problems is the victimization rates registered inside the penal precincts. Studies indicate that 38.7% of inmates report having suffered physical abuse by prison guards, 44.4% psychological abuse, and 1.2% report having been victims of sexual abuse by an official (Espinoza et al., 2014, p. 265-270). On a comparative level, a prison survey (2013) in six Latin American countries showed that Chile is the country where most prisoners report being beaten inside their prison (around 26%). Of these, 66% claim that prison staff was responsible for the beatings (Sánchez & Piñol, 2015, p. 33). The National Institute of Human Rights (INDH) found in 2017 that 17.5% of prisons had inmates injured by prison staff and 37.5% had complaints of ill-treatment (INDH, 2018, p. 125).

If ill-treatment occurs, states have an obligation to investigate and punish it.<sup>4</sup> There is no exception for the prison system.<sup>5</sup> Persons deprived of their liberty are considered to be a

particularly vulnerable group requiring special protection.<sup>6</sup> Therefore the investigation of allegations of ill-treatment must be prompt, effective, and impartial.<sup>7</sup> The Istanbul Protocol<sup>8</sup> indicates as fundamental principles for any such investigation, competence, independence, adequate resources, promptness, thoroughness, sensitivity to gender, age, disability and similar recognised characteristics, participation of victims, and public scrutiny (Istanbul Protocol, 2022, para. 184). Chile has passed a law criminalising torture and has also set up the National Mechanism for the Prevention of Torture (created by Law No. 21.154 of 25 April 2019).

In our study we want to know how complaints of ill-treatment of persons deprived of their liberty are dealt with in Chile. We are interested in finding out whether the investigations contribute to these acts being punished.

The material of our study consists of 124 complaints filed by the Chilean INDH denouncing acts of ill-treatment in the prison environment. All events occurred between 2018 and 2022. With this information we created a database that allows us to carry out a quantitative analysis. We also tracked the progress of these cases with documents that are publicly accessible on the Chilean judiciary’s website. These electronic files are the basis for our qualitative analysis.<sup>9</sup>

The INDH is an autonomous corporation under public law created for the promotion and protection of human rights in Chile.<sup>10</sup> It assumes functions that in other countries are performed by the Ombudsman.<sup>11</sup> The National Mechanism for the Prevention of Torture (in Chile: CPT or Committee for the Prevention of Torture<sup>12</sup>) acts as a functionally autonomous entity within the INDH.<sup>13</sup> A specific and exclusive function of

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*of the detainee or prisoner, nor the insecurity of the prison or penitentiary establishment can justify torture”.*

3 In the text we refer to prison as encompassing different types of detention centres, such as Preventive Detention Centres (C.D.P.), Female Penitentiary Centres (C.P.F.), Penitentiary Compliance Centres (C.C.P.) (including Education and Work Centres (C.E.T.)), Open Centres, Agricultural Centres, Penitentiary Complexes (C.P.) and High Security Special Units (U.E.A.S.), all of which are under the control of the Chilean Prison Service (Gendarmería de Chile).

4 Arts. 1 and 6 of the Inter-American Convention to Prevent and Punish Torture; Convention against Torture, arts. 4, 12 and 16.

5 Art. 5 para. 2 of the Inter-American Convention to Prevent and Punish Torture expressly states that “[n]either *the dangerousness*

6 See Brasilia Rules, numeral 22. Also: Stippel, J., & Medina, G., P. (2022b, p. 88).

7 United Nations Committee against Torture (2012). *General Comment No. 3*, para. 18.

8 On the changes introduced in the 2022 version See: Pérez-Sales (2022). Available at: <https://tidsskrift.dk/torture-journal/article/view/133932/181392>

9 Information last updated on 31 October 2023.

10 Art. 1 and 2 of Law no. 20.405 of 10 December 2009.

11 Although its creation was proposed as one of the conclusions of the National Truth and Reconciliation Commission (Rettig Report, 1991), it only began to operate in July 2010. Report of the National Truth and Reconciliation Commission: volume 1, volume 2, p. 855. Available here: <https://www.memoriachilena.gob.cl/602/w3-article-94640.html>

12 Created by Law no. 21.154 of 25.04.2019. See: <https://mnpt.cl/>

13 Art. 1 and 5 of Law no. 21.154.

the INDH is to file complaints in respect of acts of torture.<sup>14</sup> This is relevant, because a complaint allows the victim to take a more active role: both during the investigation and in the subsequent criminal proceedings (Barrios, M., 2023, p. 202). The complaint grants the power to qualify the facts or the participation of the accused in a different way than the prosecution. It also allows for proposing additional investigative measures, such as requesting forensic medical examinations or protective measures for the victim.<sup>15</sup>

In our study, we assume that allegations of ill-treatment are not investigated promptly and effectively when the victim is detained in a prison. We think that in practice the standards contained in the Istanbul Protocol are not met when investigating any act of ill-treatment committed inside a prison.

### Methods

We use the term ill treatment as a broad term in the sense given by it by the International Committee of the Red Cross. It uses the term to cover both torture and other methods of abuse prohibited by international law, including inhuman, cruel, humiliating, and degrading treatment, outrages upon personal dignity and physical or moral coercion. See: <https://www.icrc.org/en/document/torture-and-other-forms-ill-treatment-de%E1nitions-used-icrc>

We use the analysis of complaints because they provide an account of the facts as perceived by the victim. In addition, the INDH has protocols<sup>16</sup> that ensure a diligent collection of background information on each case. It is stipulated that, before a decision to file a complaint is taken, the respective unit should gather as much information as possible. To this end, officials of the INDH visit the prisons. Here they talk to the victim and ask them to recount the alleged acts of violence suffered. At the same time, the INDH officials are asked to obtain the necessary evidence to support this account. They collect medical records, meet with witnesses, and look for other elements to evaluate the possibility of filing a complaint. Then, they analyse whether the background information indicates a crime within the competence of the INDH. Based on this, the Institute's director must approve the filing of the complaint. This decision will be reported to the Council of the INDH for its knowledge. Following this decision, the lawyers of the respective unit must contact the victims, visit them, and accompany them dur-

ing the entire period of the legal action (Barrios, María, 2023, p. 198-202).

When analysing the complaints, we cannot claim that each affirmation reflects the truth. However, the story is the basis on which criminal prosecution bodies must act. Thus, the diligence of the proceedings can be observed without supposing the truth.

We analysed all the case information available on the web portal of the Virtual Judicial Office.<sup>17</sup> Our research begins with the identification of the case identification number (RIT) to access the virtual file and from there we read the pleadings, applications, resolutions, and precautionary measures online. Subsequently, the information was parameterised according to formal criteria such as the status and procedural situation of the complainant at the time of the alleged facts and behavioural descriptors extracted from them. The quantitative data presented below show the respective results.

Our statistics cannot be taken as representative of the overall dealing with torture and ill treatment cases in Chile. They provide a snapshot of a random sample. This allows us to identify recurrent problems. We can then argue that the cases are not necessarily isolated events but rather show general patterns. The qualitative analysis is then meant to illustrate those patterns. We analysed some of the 124 cases in the light of international norms and jurisprudence. The selection criterion is their representativeness in view of the quantitative results.

### Findings

#### *Quantitative:*

Most of the complaints allege deliberate physical violence (60%). Cases of "violation of dignity" represent about 25%. Table 1 illustrates this result.

There are several cases where both physical violence and violation of dignity were denounced, in one example, we registered the case only in the category that in our opinion represented the main reason for the complaint. The data indicated that the INDH intervenes mostly in cases where acts of physical violence are the main cause of complaints of prisoners.

From a procedural perspective, we found that of the total number of cases analysed, 58% are still pending. Some 31% ended with a decision not to pursue<sup>18</sup>. 2% ended in a conditional suspension of proceedings, oral trial, and in a definitive

<sup>14</sup> Art. 3 no. 5 of Law no. 20.405.

<sup>15</sup> Arts. 111° to 121° and 261 of the Code of Criminal Procedure. Law no. 19.696 of 2000.

<sup>16</sup> Formal instruments through which general instructions for action are given within the INDH.

<sup>17</sup> See: <https://oficinajudicialvirtual.pjud.cl/indexN.php>

<sup>18</sup> When the Public Prosecutor's Office decides to discontinue an investigation (*decisión de no perseverar*), it notifies the judge of its decision not to pursue the proceedings because it has not been able to gather sufficient evidence for a prosecution (art. 248 a. of the Criminal Procedure Act).

**Table 1.** *Description of cases*

Criteria	N	%
Deliberate physical violence	74	60%
Violation of dignity	31	25%
Inhuman and degrading treatment	8	6%
Discrimination	6	5%
Sexual violence	4	2 %
Dark alley	1	1 %
Total	TOTAL 124 CASES	100,00%*

\* The sum after the decimal point has been rounded. Therefore, the total sum is not equal to one hundred.

**Table 2.** *Procedural status/completion form (2018 to 2022)*

Types of termination forms	N	%
Pending* (considers reopening's)	72	58 %
Decision not to pursue	39	31 %
Sentence	5	4 %
Definitive Dismissal	3	2%
Oral Trial at TOP	2	2%
Conditional suspension of proceedings	2	2%
Settlement agreement	1	1%
Total	124	100,00%

dismissal. In one case a reparatory agreement was signed. Table 2 shows this result.

If we analyse these figures in relation to all cases, we find that almost a third of them are archived (31%). This figure is even more worrying if we look at it in relation to the total number of completed cases. In that case, we would have to conclude that about 75% of the closed cases ended in some form of shelving.

In our study the alleged lack of evidence is therefore the main reason hindering prosecution to take place. But the absence of evidence is not evidence of absence. That is precisely the reason why the Istanbul Protocol sets out standards on how

effective legal and clinical investigation and documentation into allegations of torture or ill-treatment should be carried out. Hence the result is particularly worrying. This is true as well in view of the possible outcome of the pending cases. Other research shows similar results.

María Carolina Barrios found that 69% of the complaints filed and closed by the INDH against the prison administration (years 2011-2021) ended up being shelved (Barrios, 2023, p. 215). Drawing on statistical data provided by the Public Prosecutor's Office, we can back this result. According to this information, of all the complaints of ill-treatment investigated by the Public Prosecutor's Office in 2020 in the prison system

(299 in total), more than three quarters (75.91%) were closed due to a lack of evidence. 143 cases (47.83%) using the provisional closure in an early stage of the proceedings; and 84 cases (28.09%) applying the decision not to pursue (Stippel & Medina, 2022b, p. 99).

The latest figures show that almost half of the complaints of ill-treatment (47.83%), did not even come to the attention of a judge. They are closed at an earlier stage applying a discretionary measure (provisional closure) by the prosecutors. Such a procedural shelving in an early stage applies only in the absence of a complaint. From this we could deduce the practical usefulness of the intervention of the INDH. At least it would have the effect that the prosecution does not close the case at the outset. But this positive outcome for the work of the INDH would be worrying for the prosecution and the rule of law. It would imply that only at the insistence of a third party, the prosecution takes some time to investigate crimes committed within the prison system (Stippel & Medina, 2022a). Or in a more colloquial sense, if nobody watches, those cases are closed at once.

This interpretation can be underpinned by the findings of other researchers. Luis Pasará analysed several cases of serious injuries that were closed without further investigation. The alleged crimes did not happen in the context of the prison system. Still Pasará notes that the initiative of the victim seemed to play a decisive role in the prosecution of the case. He considered that when the victim did not insist with the prosecutor's office, the case was destined to be closed, even if it was a crime that did not require action by the party. He finds that the lack of investigative activity in some cases simply showed a lack of interest. (Pasará, 2015, p. 123-125).

The qualitative analysis of several cases in our study will allow us to add nuance. It seems that even the victim's insistence is of little relevance if the case is not of interest to the prosecution. Here, the complaints only delay the decision to close a case without necessarily making the investigations more diligent. Let us return to this issue.

If we analyse the time that elapses between the facts denounced in the complaint and the decision not to pursue, we find that such a measure is adopted on average after 704 days. Table 3 shows this result.

Why does it take, on average, almost two years to interview witnesses, collect video footage from prisons, conduct expert examinations, to mention a few examples? Or from another perspective, if there is no additional work to be done, why is it that prosecutors do not close the case earlier?

**Table 3.** *Time between events and decision not to pursue (n=39).*

Shorter: 161 days (RIT O-770-2019 JG Colina)  
 Longest: 1407 days (RIT O-3476-2020 JG Talca)  
 Average time: 704 days.

It could be argued that there is an undue delay in the conduct of the proceedings (see: Sánchez, 2020), especially if we consider the average duration of other cases. According to the data contained in the Annual Statistical Bulletin of the Chilean Public Prosecutor's Office for 2022, the average case that comes to court was closed after 388 days. If an investigation is closed earlier and without the participation of the judiciary, the average time spent on the investigation was 148 days. Nevertheless, the same source shows that this year an average investigation into torture or ill-treatment with a judicial ending took about 971 days. If the case was closed without a judge, torture, and ill-treatment investigations lasted 634 days. In comparison with all other groups of criminal offences, torture and ill-treatment investigations lasted the longest (Fiscalía, 2023, p. 41).

The long time investigated proofs not necessarily that these cases were the most complex. As well, it might indicate a lack of human resources or qualified knowledge on how to efficiently prove claims of torture and ill-treatment. At least some recent government initiatives and the results of other investigations back the last interpretation. The Ministry of Justice announced (2021) a plan to spend a considerable amount of money on strengthening the implementation of the Istanbul Protocol.<sup>19</sup> Other research finds that the range of forensic medical examination offered does not reflect the extent of current requirements in relation to the need for an assessment using the Istanbul Protocol to establish physical and psychological damage caused by torture (Rosentreter, 2020, p. 51). If this is true, there could also be an issue of priorities. If there are complaints of ill treatment suffered by victims outside prison, these could be of prime importance. This would again be in accordance with our other research on legal practice in Chile (Stippel & Medina, 2022a). The qualitative analysis will provide additional elements to find out whether this apparent delay in the proceedings is proportionate to the complexity of the cases.

In our study we also found that a considerable amount of time elapses between the facts reported and the time when the complaint is filed. The average is 89 days, with 2 days being the

<sup>19</sup> See: <https://www.minjusticia.gob.cl/protocolo-de-estambul-ministerio-de-justicia-anuncia-inyeccion-de-513-millones-al-sml-para-acelerar-los-peritajes-en-causas-de-derechos-humanos/>



**Table 4.** Average time (event and filing of complaint) filtered by descriptors

Type of ill-treatment or torture	Average time spend between the facts and the filing of the complaint (days)
Violation of dignity	130
Deliberate physical violence	81
Sexual violence	78
Inhuman and degrading treatment	69
Discrimination	43
Dark alley	8
Total average time between facts and filing of complaint (in days)	89

shortest<sup>20</sup>, and 765 days<sup>21</sup> being the longest delay. Table 4 shows this result differentiated by descriptor of the facts reported:

The time delay can be explained by both internal and external factors. The process of checking the facts in accordance with the INDH internal protocol takes time. It is necessary to visit the alleged victim in the respective detention centre. In addition, any complaint must be approved by the management of the INDH. It should also be considered that persons deprived of their liberty must first be able to contact the INDH. As a complaint of ill-treatment or torture directly involves the prison administration, victims may be subject to reprisals. Out of fear, they may decide not to report the violence they suffered or, alternatively, they report it belatedly when they feel confident that they can do so (see Stippel, Pérez & Barría, 023). The qualitative analysis of the causes will show some of the difficulties that prisoners may face when reporting acts of torture and ill-treatment in prison.

#### Qualitative analysis

##### *Cases of deliberate physical violence:*

A case of physical abuse is denounced in a complaint filed on 10 July 2019 before the Court of Guarantee<sup>22</sup> of Colina.<sup>23</sup> It contains the following facts:

“On 25 March 2019, Mr. VM was sent by other inmates to look for a “pelotazo” (throwing of drugs from the outside to the inside of the prison unit), which he did not pick up because the prison’s security camera focused on it. In this context, a prison official appeared [...] who took him to an isolated office, forced him into a punishment position, and began to assault him, whipping him with an iron - part of a bed frame - at least 30 times, on his waist, back and arms, bleeding profusely, while saying “maldito culiao” (dam asshole), “te metiste con el equivocado” (you messed with the wrong one). The beating lasted approximately 10 minutes, leaving the victim lying on the floor, and then transferring him to the prison infirmary, claiming that the inmate had assaulted him, a claim that is false.

[...] For his part, the victim remained in the infirmary of the prison unit for seven days in “isolation”, being prevented from contacting his lawyer and even denied the possibility of speaking to the judge when he visited the prison. [...]”

20 For example, in Case RIT 646-2021 of the Court of Letters and Guarantee of Aysén.

21 Case RIT 7954-2022 of the Juzgado de Garantía de Concepción. It is still in the judicial process.

22 The Courts of Guarantee (*juzgados de garantía*) were introduced at the beginning of the century (2001-2005) as part of the reform of the criminal procedure. They are asked to guarantee the rights of the criminal defendant during the procedure (art. 14 Código Orgánico de Tribunales).

23 Case RIT 3739-2019, Colina Guarantee Court.

The complaint was declared admissible on 15 July 2019. On January 6<sup>th</sup>, 2020, the judge determined the investigation should be concluded in 90 days. The same resolution ordered precautionary measures to be in place. The defendant is banned from approaching the victim and forbidden to leave the country. On the 8<sup>th</sup> of May of 2020, on request of the prosecutor, the judge authorized the investigation to take 60 additional days. The same happened on the 31<sup>st</sup> of July. The judge again authorized an additional 60 days. On the 23<sup>rd</sup> of December 2020, the judge summons the intervenient to come to a court hearing meant to close the investigation. This was going to happen by videoconference. The digital court hearing takes place on the 25<sup>th</sup> of February of 2021. As the case is being closed, the INDH requests for a reopening. They argue that, thus far, no forensic medical examination, following the standards of the Istanbul Protocol, had been realized. This is a standard request in most of the complaints presented by the INDH. The judge rules to discuss the reopening in a videoconference on the 12<sup>th</sup> of April of 2021. This day the prosecutor communicates his decision not to pursue the investigation. The INDH manifests its opposition as several necessary investigative steps have not been undertaken. Then, on 22<sup>nd</sup> of July 2021, the judge decides to call for a new hearing to discuss an extension of the period of investigation. On the 7<sup>th</sup> of September 2021 the prosecutors' request an additional 20 days. Nevertheless, the representative of the INDH opposes this additional time and the judge decides not to grant it. In consequence the prosecutor issues a resolution stating that they decided not to pursue in the investigation. This time the judge invites to a hearing to take place the 25<sup>th</sup> of January 2022. On the 24<sup>th</sup> of January the court issues a resolution that due to a lack of judges, the court hearing will be postponed to the 19<sup>th</sup> of May 2022. On this date, the court accepts the Public Prosecutor's Office's decision not to pursue the investigation. In the same resolution, the precautionary measures against the defendant are lifted. More than two years had elapsed between the alleged facts and the date of closure. The grounds for the decision are not recorded in the minutes uploaded to the Virtual Judicial Office. However, it is surprising that the decision was taken.

The facts described above show a case where violence is apparently used as a form of punishment. The official has intentionally inflicted pain by means of blow ("lashes") with iron to punish the victim for his alleged participation in an illegal act (the "*pelotazo*"). Considering the alleged duration of the beatings and the circumstances in which the victim falls to the ground and must be transported and treated in the infirmary, there can be no doubt that the caused suffering is intentional and illegitimate. Everything indicates that we are dealing with an act

of torture. As the alleged victim was treated in the infirmary, there should be a medical record of the treatment. It can also be assumed that there is video footage that can verify the journey of the person and the officer involved before being placed in isolation. It is difficult to imagine that it would take two years to collect such material and interview possible witnesses. In contrast to investigations outside prison, potential witnesses are either locked up or are public officials whose names should be known. In this context, and despite the seriousness of the complaint, international standards have not been met in the handling of the case (see Istanbul Protocol, 2022, parr. 193). Instead of determining at an early stage that the investigation would be unsuccessful, based on a record gathered without delay, the prosecuting body took years to reach that conclusion. Even more worrisome is that almost two years after the alleged torture, apparently no forensic medical examination had been realized. According to international standards this should have been done immediately (Istanbul Protocol 2022, parr. 196). The complaint by the lawyer of the INDH also shows that after all this time they still did not count on all information relevant to the investigation (Istanbul Protocol 2022, parr. 197). Similar violations to international standards can be observed looking at the precautionary measures ordered by the judge. It took him half a year after becoming aware of the case (15.07.2019) to issue precautionary measures (06.01.2020). This would be more than enough time to expose the victim to adverse consequences of his complaint. As he is still detained in the same prison facility, it would be very easy for the prison officer to threaten the victim and maybe force him to retract his complaint (see Istanbul Protocol 2022, parr. 196).

Despite all this, the decision not to pursue does not even indicate whether the Prosecutor's office, in making the decision, considered bringing a less severe offence, or whether it requested the initiation of disciplinary proceedings against the official involved. This omission also contravenes international guidelines (Istanbul Protocol, 2022, para. 256).

#### *Physical abuse for asking for explanations.*

A complaint filed on 14 July 2020 in the Vallenar Court of Guarantee was handled in a different way. The case concerned the following facts:

"On 3 July 2020 [...] when these medicines were requested, a prison official threw them from "the fence", causing them to fall to the ground, and because of this, he was told of this action and asked why this attitude had occurred. Just for asking for explanations, the victim indicates that he is taken out of his yard, by means of insults from the

same person, and is taken to the Internal Guard sector..., where he is beaten with fists and with the service baton. In various parts of his body, especially on his back, there are blows that leave marks on his body and which are recorded in photographs that are accompanied in a separate part of this presentation. The beating lasted a couple of minutes, but it was not “something quick”, and he was evidently unable to defend himself. After the beating, he was returned to his yard without receiving medical attention. He says that he asked to be taken to check for injuries, which did not happen either, and has not happened at least up to the filing of this action”<sup>24</sup>.

On 21 July 2020, the court decreed protective measures<sup>25</sup> for the victim. It stipulates that the prison official responsible must be prevented from exercising “*direct actions with regard to the surveillance and custody*” of the victim, in addition to the “act that *“he may not take any administrative decision with regard to the aforementioned inmate in the light of his position”*”. On 5 May 2021, the court decreed the definitive dismissal of the complaint. It considers that “*from the dynamics of the facts that have been observed, the court understands that a circumstantial situation will have arisen; that in the end it does not violate the essence of the internal regime of the accused, together with the fact that after the respective hearing of precautionary measures of guarantee, no new incidents or constraints occurred with respect to this person [...]*”<sup>26</sup>.

This case allows us to highlight the role played by the judge in this case. The Istanbul Protocol stipulates that judges must be particularly vigilant in exercising a supervisory role within the scope of their functions to ensure the physical and psychological integrity and well-being of any person deprived of liberty. (Istanbul Protocol, 2022, parr. 258). It can hardly be argued that the judge in this case was “particularly vigilant”. Although the judge takes the decision to order protective measures, he does so only on the sixth day after the case comes to his attention. He then describes what happened as “a circumstantial situation”. As if the blows with fists and batons were a circumstantial part of a custodial sentence. A judgement that demonstrates a perception of the purpose of a custodial sentence that contradicts the parameters of a democratic state governed by the rule of law. The same is true when considering that after the hearing there have been no new incidents or harassment of the victim, implying that the crime of torture and ill-treatment is

only punishable in the case of recidivism. Contrary to this argument, the Inter-American Court of Human Rights presumes that the State is responsible for torture, or cruel, inhuman, or degrading treatment suffered if the authorities have not carried out a serious investigation of the facts. Therefore, the burden of proof is on the State to provide a satisfactory and convincing explanation of what happened and to refute the allegations of its responsibility<sup>27</sup> (Istanbul Protocol, 2022, parr. 71). Such an obligation exists from the first allegation and not only if there are no “further incidents”.

*Physical abuse for failure to comply with orders.*

Another form of physical mistreatment is denounced in the Juzgado de Garantía de Arica on 14 August 2020<sup>28</sup>. The complaint relates the facts as follows:

“JAP, accused on remand detention..., on 10 April 2020, at approximately 8.30 a.m., was taking a shower inside the bathrooms ..., when an altercation broke out in the courtyard between inmates of that unit, which was controlled by ...officers T and G, who removed the protagonists of the fight from the place. However, a few minutes later, a group of officers from the Specialised Services Unit USEP of the prison administration... entered the yard, “shouting “get out, get out, everybody”. JAP was showering naked and when he heard these orders, he put his hands up on his head as a sign of submission and did not come out immediately because he was naked and because there was a female officer at the entrance to the showers. Immediately, Lieutenant JLGM entered the shower area, pointed at him from a distance of approximately three metres with a compressed air gun and fired a tear gas canister directly into his face, hitting him in the left cheekbone, 1 cm from his eye. Lieutenant JLGM then said: “I’ve already collected my money”. JAP was screaming in pain, he could not see well because of the impact, and still naked he went to the line of inmates that the officers had ordered, and from there another officer helped him to get out and took him to the Prison Complex infirmary to have his wound treated. [...] On his return..., he was ordered to remain in the infirmary for a few days and was then returned to “his module”. (emphasis added).

This case was declared admissible on 14 August 2020. Subsequently, there are no other documents in the digital file. On

24 RIT 1831-2020 of the Vallenar Court of Guarantee.

25 The Vallenar Guarantee Court on 21 July 2020, i.e. only 6 days after declaring it admissible.

26 Vallenar Guarantee Court held on 5 May 2021.

27 Inter-American Court of Human Rights (IACHR), *Juan Humberto Sánchez v. Honduras*, Judgment, 7 June 2003, para. 111; and *Baldeón-García v. Peru*, para. 120.

28 Case RIT 7245-2020.

28 July 2023, a hearing was held for the Public Prosecutor's Office to communicate that it was not pursuing the proceedings. However, the Court replies that "[t]he Public Prosecutor's Office communicates the closure of the investigation and the decision not to pursue the proceedings. The Court rejects the Public Prosecutors Office's communication". Thus, to date, the case has not been formally terminated.

However, for the prosecution, the case is closed. According to internal regulations (instruction<sup>29</sup> of the National Prosecutor), the decision not to prosecute does not require judicial approval. The respective resolution is to be understood as a communication of the exclusive decision of the prosecuting body.<sup>30</sup> Therefore, the highest authority of the Prosecutor's office instructs all prosecutors to reopen a case only when there is new information that justifies it and which does not stem from an autonomous investigation by the prosecutor.<sup>31</sup> In other words, the rejection pronounced by judges generally has no practical effect. Only if the complainant (here the INDH) objects to the decision, the case is referred to the superior prosecutor. If the latter reconfirms the decision, which is most likely in view of the internal regulations, the complainant is only left with the task of bringing the accusation before the judge on his own.<sup>32</sup> He would be accusing the possible perpetrator on his own account (Correa Robles, C., 2020, p. 167). This procedural solution is not appropriate in investigations of torture and ill-treatment. The victim is left alone against the same state whose officials allegedly violated his or her rights.

If we look at the facts of the case, we can first note that the definition of torture in the Convention against Torture excludes pain or suffering resulting only from, inherent in, or incidental to lawful sanctions (Istanbul Protocol, 2022, parr. 3). In this context, the Nelson Mandela Rules authorise the use of force under certain conditions. One of these conditions is that the use of the respective instruments must be provided for by law (Nelson Mandela Rules, 2015, rule 47). Moreover, it is only justified if no other form of control is effective and, even then, the least injurious means should be used (Nelson Mandela Rules, 2015, rule 48 No. 1 (a) and (b)). It could be argued that the prisoner failed to comply with an order and therefore force had to be used. However, the use of tear gas in prison is not provided for in any law. There are only regulatory and in-

ternal rules that refer to the rational use of force without referring to the different instruments involved and the situations that would justify their use.<sup>33</sup> Worse still, these internal rules are not public knowledge, let alone auditable. In Chile we are faced with a legal vacuum. However, it would be impossible to justify firing a tear gas canister in the face for failure to comply with an order immediately. There are other less harmful means that could have been used to make a naked person comply with an order, such as asking the female officer to move away from the entrance to the shower. From that perspective, the conduct complained of should be dealt with in accordance with the standards provided by the Istanbul Protocol.

On the other hand, we can highlight the unlawfulness of forcing a prisoner to stand in a line naked, especially if there are persons of the opposite sex present.<sup>34</sup> Such an act constitutes a form of cruel, inhuman or degrading treatment, especially if it is intended to humiliate the victim.<sup>35</sup> The Istanbul Protocol recalls that sexual violence against men highlights the vulnerability and powerlessness of the victim, challenging and conflicting with his ideas of masculinity. From this perspective, it is not understandable why no measures for the protection of the victim are on record. These measures could even have been imposed by the judge himself at the time of taking cognizance of the case through the complaint. However, no actor seems to have perceived the need to protect a victim of sexual violence.

#### *Dark alley*

##### *Collective punishment.*

A complaint filed in the Temuco Guarantee Court<sup>36</sup> on 30 December 2021 denounces a form of illegitimate constraint that has been called "dark alley" (Valech Report 2005, p. 239). According to the facts described in the complaint of 30 December 2021, the following happened:

33 Exempt Resolution no. 9.681. See: (Tapia Silva, M. 2023, p. 144ff).

34 In their study Albano et al. (2023) highlight that sexual abuse has been consistently identified as a high frequency problem in prisons. They define sexual abuse broadly and include mental sexual violence, such as forced nudity, sexual humiliation, sexual threats and forced submission to witness sexual abuse. They find that the prevalence of sexual abuse is high among victims of abuse in prison. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9956078/>

35 Special Rapporteur on Torture (2010), *Report A/HRC/13/39/Add.5*, para. 32. The IACtHR has highlighted that the degrading character is also expressed in actions that seek to "humiliate, degrade and ... break physical and moral resistance". Inter-American Court of Human Rights (1997). *Case of Loayza Tamayo v. Peru*, para. 57.

36 RIT 11449-2021.

29 Oficio FN no. 060/2014 of 23.01.2014. Available here: [http://www.fiscaliadechile.cl/comisionjuridica/docu/inst/of\\_60.pdf](http://www.fiscaliadechile.cl/comisionjuridica/docu/inst/of_60.pdf)

30 Oficio FN no. 060/2014 of 23.01.2014, point 2.3.d.

31 Oficio FN no. 060/2014 of 23.01.2014, point 2.3.e.

32 Art. 258 para. III. and IV. CPC

“The victims state that, on 22 December 2021, at approximately 14:00 hours, a search was carried out [...] 00 hours, a search procedure was carried out [...] They state that the reason for this action by the prison guards was due to the fact that at that time there was an argument with an official who denied them the daily yard time they were entitled to [...]. In this context, the victims say that the alarms of the prison unit immediately went off and approximately 20 prison guards entered their dormitory, proceeded to throw pepper spray in their faces and beat them with their service batons, kicking them and hitting them with their fists on their bodies. Subsequently, they ordered all the inmates to leave the dormitory and to go down the staircase leading to the corridor of the “fifth gate”. On that route, they indicate that the prison guards **formed a tunnel** through which the victims passed, **while they insulted and beat them**, and once they were down the stairs, they threw objects at their faces, including bottles. Once they had all been reduced, in the corridor of the “fifth gate”, they report that officials continued to **throw pepper spray** at them while they were walking among them, even though there was no resistance to the procedure, which had already been completed. Finally, the victims report that during the search procedure **they were forced to pull down their trousers and underwear** to their calves, **while they had to perform squats in front of other inmates and prison guards.**” (emphasis added)

In this case, the Prosecutor’s Office has decided to communicate the decision to close the case (not to pursue). The court therefore set the respective hearing for 19 July of 2023. At this hearing it was finally decided to close the case (not to prosecute). The reasons were not reproduced in the minutes uploaded to the Virtual Judicial Office. However, it should be noted that the Public Prosecutor’s Office took more than a year and a half to reach this decision, despite the existence of multiple victims.

The Prosecutor’s decision not to prosecute is surprising, especially given the international and Chilean experience. This form of unlawful coercion has a long history; very similar facts are described in a case decided by the Inter-American Court of Human Rights. In the case of the *Miguel Castro Castro Prison v. Peru*<sup>37</sup> the “dark alley”<sup>38</sup> is described as a “*method of punishment*

*that consists of forcing the detainee to walk in a double line of prison guards armed with blunt instruments such as sticks, and metal or rubber batons. The prisoner receives multiple blows as he advances, falls to the ground and then stands up again and receives more blows until he reaches the other end of” the alley*”<sup>39</sup>. In that case the court-retained expert found that “*this method of collective punishment, “by its severity and physical and psychological consequences [ , is] consistent with torture*”.<sup>40</sup> In Chile, the Valech Report also describes the so-called “dark alley” under similar conditions. According to this document, this method consisted of “*making the detainees pass between two rows of soldiers who beat them with their feet, fists and butts*” (Valech, 2005, 239). We also have a recent video that shows precisely this type of action by prison guards after a raid.<sup>41</sup>

There are therefore both international precedents, as well as national experiences that allow us to think that what has been denounced is reasonable. However, the Public Prosecutor’s Office, using its exclusive prerogative<sup>42</sup>, decided to close the case. The Istanbul Protocol stipulates that prosecutors must exercise their discretion in a way that fully respects the prohibition of torture in all judicial proceedings. It further stipulates that they should not become complicit in facilitating or committing acts of torture or ill-treatment or in impunity for such acts (Istanbul Protocol, 2022, parr. 255). From this perspective, it seems necessary to make very restrictive use of the power not to pursue an investigation into acts that could constitute torture. On the contrary, we see that 31% of all the cases (in 39 out of 124 cases) that form the basis of our research have been resolved in application of this procedural tool.

#### *Violation of dignity*

##### *Forced position for breaking the “code of silence”.*

Another form of torture or ill-treatment recurrent in the complaints is forced posturing (Istanbul Protocol, 2022, parr. 488). A complaint filed in the Court of Guarantee of Victoria<sup>43</sup> on 2

39 I/A Court H.R. Criminal *Miguel Castro Castro v. Peru*, p. 41.

40 IACHR Criminal Court *Miguel Castro Castro v. Peru*, para. 297.

The IACHR Report also describes a similar “welcome” practice in a prison in Peru and El Salvador. This consisted of “*subjecting inmates who entered to beatings with sticks and prods (electric batons), after forcing them to undress and take cold water baths, in order to make them feel their duty to submit to prison discipline*” IACHR Report, para. 391.

41 See the video of 26 October 2022. Available here: <https://www.theclinic.cl/2022/10/27/denuncian-violento-actuar-carcel-puente-alto/>

42 Regarding the discussion on the legal quality of the decision, see: Correa Robles, C., (2020, p. 164).

43 RIT 1083-2021 of the Court of Guarantee of Victoria.

37 Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_esp.pdf)

38 In the US Thomas Murton describes a similar method called “run the gauntlet” (Murton, T., 1976, p. 70).

September 2021 denouncing the crime of torture<sup>44</sup> states the following:

“... between 16 February and 24 April 2021, prison guards shackled him by his right foot to the bed where he slept, according to them as a security measure, to prevent him from escaping, spending approximately 20 hours a day enduring this situation, from 15:30 hours in the afternoon until 12:00 hours the following day, which at the time caused him marks and injuries, in addition to serious psychological effects, indicating that he is currently undergoing mental health treatment for this reason. [...] During this period, his possibilities of movement and mobility were minimal, and he had to remain lying down without interruption, unable to access basic services such as the use of the bathroom when he required it, having to use a container that he kept next to his bed, which he had to clean the next day when he was released. [...] He also states that when he was shackled, the prison guards often referred to him as “**the toad**” and insulted him because he had made complaints in the prison unit from which he came, which, according to him, resulted in administrative proceedings against several officials of the Ancud prison. Furthermore, on the bed where he was shackled, the same prison guards decided to hang a sign with the acronym HIV on it, informing everyone who passed by of his illness, which generated discriminatory comments around him, hiding it whenever possible, but it was put up again by the said officials. On a daily basis, the same officials, when passing by him, referred to him as “*el sidoso*” and to be careful with touching him because he could be contagious.

At the time of writing this article, the case has passed the admissibility stage<sup>45</sup> on 3 September 2021. Nevertheless, it has no conclusive results and is still pending for decision.<sup>46</sup>

In practice, there are prison guards that use body posture as an illegitimate method of force. The particularity here is the apparent punishment for being a “*toad*”. The “code of silence” (García, M. y Quesada, L. 2014, p. 30) is not only char-

acteristic of the prison subculture among the prisoners, but also conditions the prison officers themselves. According to the complaint, the punishment and mistreatment acts as an extra-regulatory sanction against an inmate who, within his rights, has denounced an official for an irregularity (Murton, T., 1976, p. 66-72). We see a combination of humiliation and inhumane treatment whose apparent purpose is intimidation. In this context, the Istanbul Protocol notes that persons deprived of their liberty are at an increased risk of reprisals as a consequence of their cooperation with persecution. It warns that investigators may encounter a “wall of silence”, as persons deprived of their liberty may feel too intimidated to confide in anyone, even when they are offered to speak in private. The Protocol recommends that when an investigation leads to prosecution, the investigator should recommend measures to prevent harm to the alleged victim, such as removing names and other identifying information from public records or offering the person the opportunity to testify through image or voice altering devices or closed circuit television (Istanbul Protocol, 2022, par. 218). The fact that we can consult all the information described in the publicly accessible records of the judiciary makes it clear that these protective measures are far from being the rule in allegations of torture and ill-treatment.

### Conclusion

Our quantitative data, together with the qualitative analysis of the cases reviewed, show that the efforts made by the Chilean State in terms of regulations and institutions to prevent and punish ill-treatment in the prison system have not been effective.

In fact, if we look at the processing of the cases, we find an excessive amount of time that elapsed between when the facts that are reported, the filing of complaints, the use of protection measures, and the termination of the cases. This proves the lack of implementation of the guidelines provided by the Istanbul Protocol.<sup>47</sup> We interpret the work of the INDH in the same sense. Although this institution manages to file complaints in support of the victims of acts of torture and ill-treatment, it does so at a late stage, generally days, weeks, or months after the occurrence of the events. There is therefore a general delay in the possibility for victims to find effective external support. Investigations do not meet the requirement of promptness. Moreover, it is difficult to argue that the results of the court cases show that the problem of torture and ill-treatment denounced in the complaints is not real. Most of the cases have been terminated by decisions not to pursue the investigation.

<sup>44</sup> Art. 150, letter a) of the Penal Code.

<sup>45</sup> On 3 September 2021, i.e. one day after the complaint was filed, the court declared it admissible and referred it to the Public Prosecutor’s Office, after which, on 18 November 2022, the NHRI delegated power of attorney and no further action was pending.

<sup>46</sup> In the same category and facts, we can cite cases of the Valdivia Guarantee Court RIT 4393-2020, 4279-2020, 1403-2022, 1401-2022, 1400-2022 and 1399-2022 and case RIT 790-2022 of the Victoria Guarantee Court.

<sup>47</sup> We discuss some of these shortcomings in: Stippel & Medina (2022b).

This fact indicates that there appear to be serious deficiencies in the investigation of torture and ill-treatment in Chile. We showed how the victims' requests for forensic medical examination are not met. Neither are victims informed about the results of the investigations. If protective measures are ordered, this happens at such a late stage that any adverse effect of the complaint could be a fact already. As a consequence, most of the complaints are not clarified, and sooner or later end up being shelved.<sup>48</sup> In another study, we described the lack of specific guidelines for the criminal prosecution of acts of torture and ill-treatment in the Chilean prison system.<sup>49</sup> There is still no systematic and coordinated effort to eradicate violence and particularly ill-treatment from prisons.<sup>50</sup> In the context of this study, it became evident that investigations into allegations of ill-treatment contravene international guidelines and lack effectiveness. Several of the cases discussed undoubtedly should have been pursued, and the perpetrators sanctioned, at the very least for unjustified excessive use of force and coercion, although not necessarily torture.

The frequency and the fact that these acts can be verified throughout the country in very different prisons leads to the conclusion that they are not isolated examples of individual criminal acts but reflect symptoms of deficiencies in institutional structures. The particular use of violence described in the complaints indicates that it is not coincidental but rather a means of exercising control and guaranteeing the domination over prisoners. This situation is favoured by the deficient processing of the complaints filed in these cases.

### References

- Albano, G. D., Guadagnino, D., Midiri, M., La spina, C., Tullio, V., Argo, A., & Zerbo, S. (2023). Torture and Maltreatment in Prison: A Medico-Legal Perspective. *Healthcare*, 11(4), 576. <https://doi.org/10.3390/healthcare11040576>
- Barrios A., María C. (2023). La acción de querrelante por parte del Instituto Nacional de Derechos Humanos en delitos cometidos al interior de las cárceles chilenas. In: Stippel, J., & González, P. M. (Eds.), *La No Ciudadanía, Sobre la Exclusión Legal y Real de las Personas en el Sistema Carcelario* (pp. 193 - 243). Santiago: Tirant lo Blanch.
- Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability (2008). XIV Ibero-American Judicial Summit, 14, 53-75.
- Castro M., A., Sanhueza, G. E., Purán, V., & Cortes, J. (2020). Fiscalía Judicial: posibilidades y limitaciones en su rol de inspector de prisiones. *Política criminal*, 15(30), 871-906.
- Centro de Derechos Humanos UDP. (2014). El sistema penitenciario y su impacto en los derechos humanos de las personas privadas de libertad. En Informe sobre Derechos Humanos en Chile (pp. 245-290). Ediciones Universidad Diego Portales. [https://derechoshumanos.udp.cl/cms/wp-content/uploads/2020/12/Informe\\_Anuar\\_DDHH\\_2014\\_Completo.pdf](https://derechoshumanos.udp.cl/cms/wp-content/uploads/2020/12/Informe_Anuar_DDHH_2014_Completo.pdf)
- Correa Robles, C. (2020). Uso y abuso de la decisión de no perseverar en el procedimiento. *Revista Chilena de Derecho*, 47(1), 159-185. <https://dx.doi.org/10.4067/S0718-34372020000100159>
- CPT Chile (2022). Diagnóstico de caracterización y vulneraciones a los derechos humanos en el área penitenciaria. <https://mnpt.cl/wp-content/uploads/2022/03/Resumen-Ejecutivo-Area-Penitenciaria-1.pdf>
- CPT. (2021). A decency threshold for prisons – criteria for assessing conditions of detention. En Council of Europe. Available in: <https://rm.coe.int/1680a3e6a3>
- Espinoza, O., Martínez, F., & Sanhueza, G. (2014). El sistema penitenciario y su impacto en los derechos humanos de las personas privadas de libertad. In Informe sobre Derechos Humanos en Chile (pp. 245–290). Centro de Derechos Humanos. <https://derechoshumanos.udp.cl/informe-anual/informe-anual-sobre-derechos-humanos-en-chile-2014/>
- Fiscalía. (2023). Boletín Estadístico Anual: Enero-Diciembre 2022. Ministerio Público de Chile.
- García, M. y Quesada, L. (2014). Violación sexual e impunidad en el sistema carcelario en Costa Rica. *Revista Humanitas*, 11 (11), pp. 29-46.
- Hereg, J. S. (2020). The silences of torture in Chile. *Revista de Ciencia Política* (Santiago), 40(1), 115-136. <https://doi.org/10.4067/S0718-090X2020000100115>
- INDH (2017). Study of prison conditions in Chile 2014-2015. Seguimiento de recomendaciones y cumplimiento de estándares internacionales sobre el derecho a la integridad personal, Santiago de Chile.
- INDH (2018). Estudio de las condiciones carcelarias en Chile. Diagnosis of compliance with international human rights standards on the right to personal integrity, 2016-2017, Santiago de Chile.
- Istanbul Protocol, (2022) Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Professional Training Series No. 8/Rev. 2. Office of the United Nations High Commissioner for Human Rights. [https://www.ohchr.org/Documents/Publications/Training8Rev2\\_sp.pdf](https://www.ohchr.org/Documents/Publications/Training8Rev2_sp.pdf)
- Jenness, V., & Smyth, M. (2011). The passage and implementation of the prison rape elimination act: legal endogeneity and the uncertain road from symbolic law to instrumental effects. *Stanford Law & Policy Review* (Vol. 22:2), pp. 489- 528.
- Murton, T. (1976). *The dilemma of prison reform*, Holt, Rinehart and Winston.
- Nelson Mandela Rules, (2015). UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, available at: <https://>

48 We analyse this practice in the article: Stippel & Medina, (2022b).

49 Stippel & González, 2022a).

50 There is nothing similar to the process that was driven, for example, by the passage of the Prison Rape Elimination Act (PREA) in the United States. On this experience see: Jenness & Smyth (2011).

- www.refworld.org/docid/5698a3a44.html [accessed 2 October 2023].
- Pásara, L. (2015). La justicia en la región andina. Miradas de cerca a Bolivia, Colombia, Chile, Ecuador y Perú. Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú.
- Pérez Cáceres, D., & Troncoso Zúñiga, C. (2020). Violencia político sexual desde octubre a diciembre de 2019 en Chile: análisis de contexto y prácticas institucionales de agentes del estado. *Estado, Gobierno Y Gestión Pública*, 34, 139–171.
- Pérez-Sales, P. (2022). El nuevo Protocolo de Estambul: Guía de uso y consulta para el trabajador apesurado. *Torture Journal*, 32(3), 3–15. <https://doi.org/10.7146/torture.v32i3.133932>
- Rodríguez-Pinzón, D. & Martin, C. (2006). The prohibition of torture and ill-treatment in the inter-American human rights system: A handbook for victims and their advocates. Boris Wijkstrom.
- Rodríguez-Pinzón, D., & Martin, C. (2014). A handbook for victims and their advocates: The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System (2.a ed., Vol. 2). OMCT SOS-Torture Network. [https://www.omct.org/files/2014/11/22956/v2\\_web\\_guide\\_interamericain\\_en\\_omc14.pdf](https://www.omct.org/files/2014/11/22956/v2_web_guide_interamericain_en_omc14.pdf)
- Rosentreter Z., J. (2020). La práctica de la aplicación del protocolo de estambul en la investigación de la tortura en Chile [Tesis para optar al grado de Magíster en Derecho Internacional de los Derechos Humanos]. Universidad Diego Portales.
- Sánchez, J. M. A. (2020). Los problemas de la rapidez o ultraceleridad de las audiencias en los procedimientos penales de “menor importancia” para el sistema de justicia penal. *Revista de derecho*, 27. <https://doi.org/10.22199/issn.0718-9753-2020-0003>
- Sánchez, M., & Piñol, D. (2015). Condiciones de Vida en los centros de privación de libertad en Chile [Life Conditions in carceral centers in Chile]. Centro de Estudios en Seguridad Ciudadana, INAP, Universidad de Chile.
- Stippel, J. & Vergara, L. (2023). Los errores de una política penitenciaria mal enfocada. In Fundación Chile21 (Ed.), Informe Mayo 2023 (pp. 10-17). Fundación Chile21.
- Stippel, J. A., Pérez, P., & Barría, M. (2023). On “epistemic injustice” and victimization in prisons: an empiric exploration into Chilean reality. *Revista Brasileira De Direito Processual Penal*, 9(1). <https://doi.org/10.22197/rbdpp.v9i1.803>
- Stippel, J., & Medina, P. (2022a). Discrimination in criminal prosecution: About the differences between crimes committed inside prison and crimes committed outside prison. *Revista Brasileira de Direito Processual Penal*, 8(3), Article 3. <https://doi.org/10.22197/rbdpp.v8i3.679>
- Stippel, J., & Medina, P. (2022b). Due diligence in prison crime investigations and access to criminal justice for persons deprived of liberty in Chile. In: Justicia Y Legitimidad En América. Judicial spaces for vulnerable groups of special protection; Bélanger, P. G., Argente Villarreal, A., & Sandoval Mesa J. A., (cords.); Comisión de Derechos Humanos del Estado de México; Mexico 2023. 79-115.
- Tapia Silva, M. (2023). *Manual Derecho Penitenciario Chileno*, Editorial Tirant lo Blanch ISBN: 9788411309158. First edition, March 2023.
- United Nations (2010). Handbook for Prison Leaders: A Basic Training Tool and Curriculum for Prison Managers Based on International Standards (Revised edition). United Nations.
- United Nations (2023). Preliminary observations of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dr. Alice Jill Edwards, at the conclusion of her visit to Chile. <https://www.ohchr.org/sites/default/files/documents/issues/torture/sr/preliminary-observations-srt-mission-chile-25102023.pdf>
- United Nations. (2017). Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 5th periodic reports of States parties due in 2015. Belarus. <https://digitallibrary.un.org/record/835372?ln=en&cv=pdf>
- Vío Vargas, J. (Ed.). (2023). Estudio sobre los fallecimientos en las cárceles chilenas desde enero del año 2019 hasta diciembre del año 2022. Panorama, diagnóstico y propuestas. Morir en prisión. Estudios sobre fallecimientos en cárceles, 1-97.

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# Physical therapy for survivors of torture: A scoping review

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## Key points of interest:

- Physical therapy is recommended for holistic care of survivors of torture.
- A trauma-informed physical therapy approach, coordinated with pain management, body-awareness & empowerment interventions may address the complex needs of survivors of torture.

## Abstract

*Background:* Torture can result in impaired functional mobility, reduced quality of life, and persistent pain. Physical therapy (PT) is recommended for holistic care of survivors of torture (SOT), however there are limited evidenced-based guidelines. We conducted a scoping review to identify and describe the approach and gaps in knowledge around the PT treatment of SOT. *Methods:* We adhered to the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews. Nine databases were searched. Eligible sources involved PT treatment for SOT. Interventions were categorized into themes based on recommendations from the Physiotherapy and Refugees Education Project: 1) trauma-informed care, 2) body-awareness & empowerment, 3) pain management. *Results:* The final analysis included 15 sources. Eight sources included all three themes; three of these eight sources were research studies examining outcomes following the PT intervention. While outcomes of these studies were significant for improvement among the PT groups, results must be taken cautiously due to methodological limitations of the trials. Studies assessing treatment that included only one theme resulted in no differences between the control and intervention groups. *Conclusions:* We describe the scope of the literature regarding PT for SOT. A trauma-informed PT approach, coordinated with pain management, and body-awareness & empowerment interventions may address the complex needs of survivors. However, rigorous studies of this three-themed approach are lacking. As SOT seek medical services, healthcare providers must be prepared to care for these vulnerable people. Physical therapists are encouraged to utilize a holistic approach, and to examine outcomes of this approach for SOT.

*Keywords:* torture, trauma, physical therapy, physiotherapy, pain

## Introduction

During 2022, an estimated 100 million individuals were forcibly displaced from their homes due to war, political conflict, violence, human rights violations, or fear of persecution. (UNHRC, 2022) In addition to experiencing trauma from forced migration, some of these displaced individuals are survivors of torture (SOT). The prevalence of torture in refugees, asylees and displaced persons is challenging to capture. Reports range from 1% to 76%, and vary among ethnic and racial groups. (Rabin & Willard, 2014; Sigvardsdotter et al., 2016) Torture involves infliction of severe mental and physical pain, committed by officials of the state or under the guise of the state to obtain information or confessions from, intimidate or coerce, discriminate, or punish, individuals or their relations. (UN General Assembly, 1984; UNHCR, 2022) One of the intents of torture is to destroy the dignity of the individual, thus the effects can last long after physical wounds have healed. (Rabin & Willard, 2014; UNHCR, 2022)

Pain can persist, from injuries directly related to the torture event, or from changes in nervous system functioning, termed nociplastic pain. (Fitzcharles et al., 2021) These adverse central nervous system changes, including hyperalgesia and decreased pain inhibition, contribute to persistent pain. (IASP, 2014; Tsur et al., 2020) Survivors of torture can present with low back pain, fibromyalgia, headaches, depression, anxiety, and post-traumatic stress disorder. (Amris & Williams, 2015a; Carinci et al., 2010; Longstreth et al., 2022) Symptoms can be categorized via chronic pain diagnostic classifications, and range from chronic primary pain experienced in the musculoskeletal system and coinciding with emotional distress and functional disability, to chronic widespread pain, or chronic primary headache or orofacial pain. (Perrot et al., 2019) The variability of pain presentation adds to the complexity of caring for SOT. Traumatic brain injuries are common, contributing to adverse cognitive, emotional, and behavioral changes. (Berthold et al., 2020; Doherty et al., 2016; McPherson, 2019) Successful interventions to help SOT must encompass mental, physical, spiritual, and legal means. (Amris & Williams, 2015b; Berthold et al., 2020; McKinney, 2011) As mental health and somatic symptoms are intricately linked, an interprofessional biopsychosocial (BPS) approach is warranted. (Cohen et al., 2021; Edwards et al., 2016) Physical therapists are an important part of the health care team to address somatic symptoms and improve function and quality of life for SOT. (Amris & Prip, 2000; Cohen et al., 2021; Keshk et al., 2021) However, there are limited evidenced-based PT guidelines to help direct care. (Alme et al., 2021) While there is evidence for treatment of individuals with musculoskeletal pain, few studies have ex-

amined PT for SOT, who require a trauma-informed approach. (George et al., 2021; Main & George, 2011)

Trauma-informed care fosters trust, stability, safety, and recognizes the individual's trauma experience. (HealTorture, 2024) The Center for Victims of Torture (CVT) describe trauma-informed group PT with promising provisional results, notably improved survivor coping and reduced pain intensity, but they found no improvements in disability or social participation levels, and the authors note study design limitations. (Gueron et al., 2020) A Cochrane systematic literature review found insufficient evidence to support or refute any intervention to treat persistent pain in SOT. (Baird et al., 2017) We completed this scoping review to provide a comprehensive appraisal of the literature, with the aim of understanding and describing the breadth of interventions, and gaps in PT treatment for SOT. We posed the following research questions:

1. What are the recommendations for the physical therapy treatment of SOT?
2. What are the criteria needed to identify and evaluate identified sources of evidence?

## Methods

We adhered to the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews (PRISMA-ScR). (Tricco et al., 2018) We sought to identify all sources of evidence describing PT treatment for SOT. After a Medical Subject Heading (MeSH) analysis of key words, the primary author (JD) and a medical librarian conducted a comprehensive search of multiple databases. Medline (OVID), CINAHL (EBSCOhost), Web of Science (Core Collection), Google Scholar, Global Health (CAB Direct), Ethnic Diversity Source (EBSCOhost), Lilacs, OECD, and Trip Pro were searched from inception up to January 2023. We used search terms related to torture ("torture" or "survivor"), chronic pain, and physical therapy or physiotherapy. See appendix for the full version of the Medline primary search (Appendix). The search was not restricted by language, study design or other filters. Three additional sources that came to light during review of our work were added.

We identified and removed duplicate sources. The remaining titles and abstracts were screened to determine eligibility. Sources of evidence were deemed eligible if they included PT recommendations for treatment of pain or disability for SOT. Articles were excluded if they did not describe the PT intervention. Variables of interest included specific models or approaches (example: BPS, trauma-informed, interprofessional), specific interventions, mode of intervention (individual or group), and dosage in terms of frequency and duration. Addi-

tionally, we sought to identify potential evidence gaps and the generalizability of source information; these variables included method of study, population, sample size, outcomes, country of authorship, and country of origin of the SOT. Eligible sources were reviewed by the primary author and data were extracted to an excel spreadsheet.

Extracted data included author, authors' respective country, source title, source of evidence (example: expert opinion, observational study, randomized controlled trial), year of publication, survivors' respective country of origin, and PT description, including if present, PT dosage (frequency, duration, and intensity), mode of delivery (individual or group) and whether mono- or interprofessional care was provided. Data extracted from research studies include outcome measures and results.

Data were synthesized in table form. To organize the data, we categorized the PT interventions into themes based on recommendations from the Physiotherapy and Refugees Education Project (PREP). (Alme et al., 2021) The PREP has defined essential patient management competencies necessary for working with clients who are SOT. We used three of the PREP competencies to inform our themes. These include trauma-informed care, body-awareness & empowerment, and pain management. (Alme et al., 2021) Trauma-informed care is a model of care to improve psychological and physical health while controlling for risk factors that might harm a survivor of torture. Body-awareness & empowerment acknowledges how torture can alter an individual's self-image and perception of physical sensations. (Alme et al., 2021) Body-awareness & empowerment issues can create fear of movement and altered movement patterns. The pain management theme captures interventions physical therapists use to address somatic symptoms experienced by the SOT. We categorized the PT interventions into these themes based on the source-reported treatment approach and expected effect.

## Results

Our search identified 112 sources of evidence. After deduplication, 32 sources remained for screening; 12 sources were removed as they did not include PT, leaving 20 sources retrieved for full text review. Upon review, five sources were excluded: a systematic literature review of three sources already identified and included (n=1), sources having no description of the PT intervention (n=3), and one source not specific to SOT. (Figure 1). Fifteen sources were included in the final analysis.

Source authors were predominantly from Europe (53%). (Dibaj et al., 2017; Karrer, 2022; Liedl et al., 2011; Negron, 2018; Nielsen, 2014; Nordbrandt et al., 2020; Sjölund et al., 2009; Wang et al., 2016) The remaining six sources were written by researchers from Asia, Africa, North America, and a

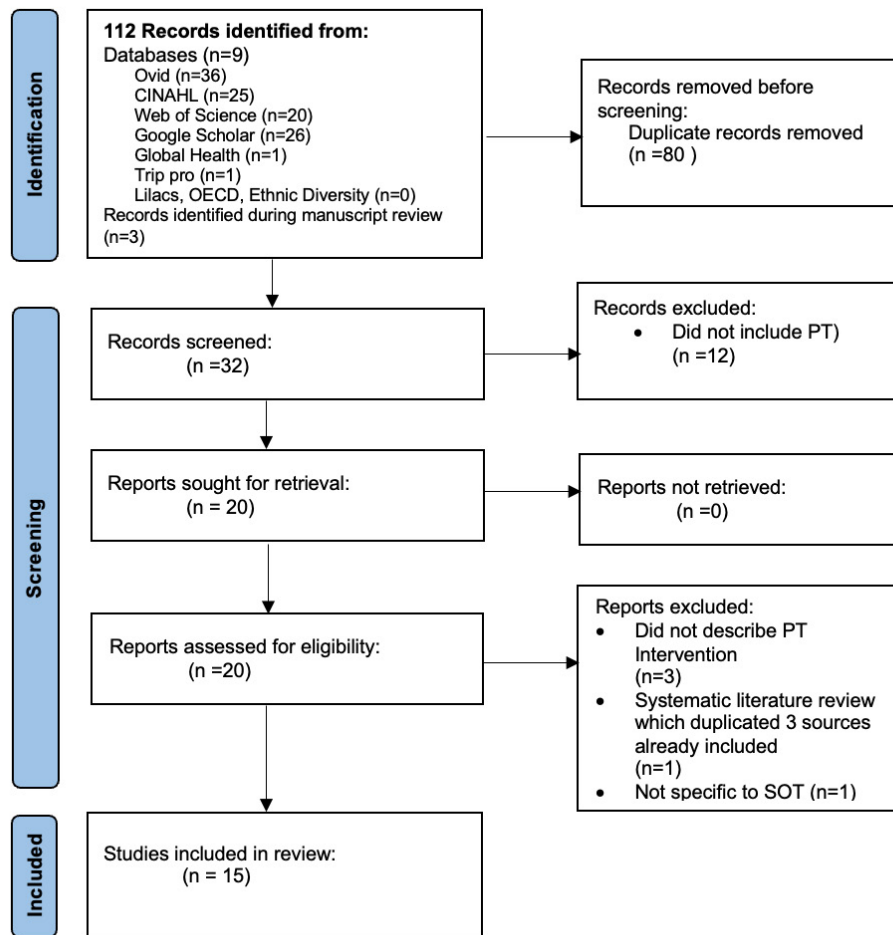
global group. (Alme et al., 2021; Gamble et al., 2020; Gueron et al., 2020; Gueron & Ruiters, 2020; Kim & Yu, 2015; Singh et al., 2019) The SOT were from the following regions and countries: the Balkans (Southeast Europe), Cameroon, Democratic Republic of the Congo, India, Iran, Iraq, Jordan, Kosovo, Morocco, South Korea, Sri Lanka, Sudan, Syria, Turkey, the Caucasus region, the Middle East, and Central Africa. Six authors did not specify the survivor country of origin.

Of the fifteen sources included in the final analysis, ten were research studies consisting of randomized controlled trials, observational studies, a survey, and a case series. The remaining sources (n=5) were expert opinion (review or perspective papers) recommending PT for treatment of chronic pain in SOT. Focus of the sources varied, from review or analysis of a specific approach (trauma informed or biopsychosocial) to the PT treatment of a specific condition such as post-traumatic stress disorder (PTSD), or to the review of a specific PT intervention. Sources had variability in the explicitness of their descriptions of the PT and for their recommendations of mode, frequency, duration, and whether the PT was delivered through group or individual sessions. Sources had variability in use of the identified themes (Table 1). One study was retracted in 2013 for data mishandling and financial irregularities, however according to the authors, the data quality, analyses, and clinical conclusions were not affected. (Liedl et al., 2011) This study was retained in a 2017 Cochrane systematic literature review with the acknowledgement of the retraction not impacting the clinical results so we also retained this source. (Baird et al., 2017)

## Intervention Summary

All sources recommended multimodal PT with a variety of interventions. Overall, there were 19 different types of interventions utilized or described in the 15 analysed sources (Table 2). Eleven sources fully described the PT interventions while four gave partial explanations (Table 1). We found complete descriptions of a specific model of care characterized by eight sources as either a trauma informed (Alme et al., 2021; Gamble et al., 2020; Gueron et al., 2020; Singh et al., 2019; Sjölund et al., 2009) or a biopsychosocial approach. (Karrer, 2022; Karrer et al., 2020; Nielsen, 2014) These sources recommended and defined culturally sensitive, trauma-informed practices in addition to pain neuroscience education, principles of graded activity, and exercise to restore function. Interventions to reduce stress, improve body awareness, sleep hygiene, symptom control, self-efficacy, and behavior change principles were also included. Five of the eight sources illustrating the trauma-informed and biopsychosocial approaches were descriptive and not scientifically tested. Both Gueron, and Karrer reported pre-post outcomes of their biopsychosocial models, and Gam-

Figure 1. PRISMA flow diagram



ble conducted a randomized controlled pilot study. (Gamble et al., 2020; Gueron et al., 2020; Karrer et al., 2020). These models of care fit into our trauma-informed care theme.

The multimodal interventions included in the sources targeted a variety of somatic elements (Table 2). Physical exercises were predominant and recommended by all sources. Recommendations ranged from general strengthening to region specific strengthening, aerobic, and aquatic exercise. Balance and body-awareness exercises were physical interventions recommended by several sources. Four sources utilized Basic Body Awareness Therapy (BBAT) which is described as a movement approach aimed at addressing movement habits and enhancing awareness of movement. (IATBBAT, 2018) The goal of BBAT is to increase ease of movement, balance and stability, as well as increase the sense of centering. Centering is a technique that

uses mindful strategies to focus on what is happening in the moment, reduce anxiety, and manage stress. (Mindtools, 2023) Other interventions recommended were pain education (n=7 sources), sleep hygiene (n=5 sources), manual therapy (n=4 sources), self-efficacy (n=3 sources), and mental imagery (n=1 source). Pain education teaches individuals about the differences between acute and chronic pain, nervous system changes that perpetuate pain symptoms, as well as the association of stress and fear of movement with pain symptoms. (Hoegh, 2022; Wijma et al., 2016) Poor sleep has a direct correlation with chronic pain symptoms, therefore identifying and addressing sleep issues is an important component of pain care. (Duo et al., 2023; Siengasukon et al., 2017) Self-efficacy is an individual's belief that they can carry out certain tasks or behaviors; low self-efficacy is correlated with disability, pain intensity, and is a

Table 1: Sources of evidence grouped by theme

Author/ Year	Title	Source	Subjects/ Country	Treatment	Identified Themes	Frequency	Outcomes/Results
Alme et al., 2021	<i>Collaborative effort to increase the physiotherapists competence in rehabilitation of SOT*</i>	Expert opinion	N/A	Did not specify group vs individual PT described: Yes. Competencies for PT's: 1) trauma sensitive care 2) BA* & empowerment 3) advocacy 4) pain management 5) self-care for the PT	Trauma BA Pain	Not described	N/A
Gamble et al., 2020	<i>The effects of a combined psychotherapy and physiotherapy group treatment program for survivors of torture incarcerated in an adult prison in Kurdistan, Iraq</i>	RCT* waitlist controlled pilot study	N=30 male Iraq	Group + 1 individual session PT described: Yes. Trauma informed approach; goal setting; relaxation, mindfulness, breathing, BA, low/mod/high intensity exercise, stretching/strengthening, circuit training. Education on PNE*, coping skills, sleep hygiene. Psychotherapy + PT	Trauma BA Pain	10 weekly group sessions	N=27 analyzed (16 wait list; 11 intervention) Central Sensitization Inventory PSFS Pittsburg Sleep Quality Index General Self Efficacy Scale Statistically significant within and between group change for all measures
Gueron et al., 2020	<i>Group physiotherapy with survivors of torture in urban and camp settings in Jordan and Kenya</i>	Observational Secondary analysis, Compared outcomes of SOT vs refugees without torture	N=1183 SOT Center for Victims of Torture in Nairobi, Kakuma, Jordan	Individual assessment then group PT described: Yes. Trauma informed approach; body mechanics, BA, pelvic floor exercises, focus on independence and empowerment; interoceptive awareness exercise, postural exercise, stretching, strengthening, aerobic exercise, sleep hygiene, control of symptoms, PNE. Psychology + PT	Trauma BA Pain	1x/week 10 weeks	DRI* Part A Functional ability DRI Part B: body functions and physicality DTI Part C: social participation DRI Part D: coping and outlook. 96% of participants improved in at least 1 of the 4 measures. Significant improvement only in Part B and D for SOT compared to those without torture experience

Author/ Year	Title	Source	Subjects/ Country	Treatment	Identified Themes	Frequency	Outcomes/Results
Karrer et al., 2020	<i>Acceptability of a physiotherapeutic pain school treatment in trauma-affected populations in the Middle Eastern &amp; Northern African region</i>	Survey + Observational pre-post treatment	N=38 adults from Morocco, Iraq, Syria, Sudan, or not reported	Individual or group PT described: Yes BPS*, trauma informed approach; BBAT* inspired exercises, BA, behavior change planning, Education: PNE, stress, sleep hygiene, pacing, daily activity.	Trauma	60 minutes x 10 sessions individual	BPI* Body awareness scale experience Self-rated health
					BA	Or 90 minutes (w/ mid-point break) if group	<b>Significant pre-post change in pain severity, pain interference, BA, self-rated health, # of painful body areas and all measures of Body awareness scale except for experience of breathing</b> (Survey results from physiotherapists not reported in this scoping review)
					Pain		
Karrer et al., 2022	<i>The DIGNITY physiotherapy pain school for trauma-affected populations</i>	Expert opinion Special report	DIG-NITY Institute SOT	Individual or group PT described: Yes BPS, trauma-informed approach BBAT inspired exercises, BA, behavior change planning, breathing exercises Education: PNE, stress, sleep hygiene, pacing, daily activity, Referral as needed to other disciplines	Trauma	90-minutes 1x/week; 10 sessions	N/A
					BA		
					Pain		
Nielsen, 2014	<i>Interventions for physiotherapists working with torture survivors with special focus on chronic pain, PTSD*, and sleep disturbance</i>	Expert opinion Special report	DIG-NITY Institute SOT	Individual PT described: Yes BPS, trauma informed approach: address PTSD, BBAT, BA, grounding, breathing / relaxation, mental imagery, strengthening, stabilizing, endurance, exercise, Education: Pain, daily living, sleep hygiene, massage Recommends interprofessional: MD, psychology, PT, social work	Trauma	Short- or long-term care	N/A
					BA		
					Pain		

Author/ Year	Title	Source	Subjects/ Country	Treatment	Identified Themes	Frequency	Outcomes/ Results
Singh et al., 2019	<i>The role of physiotherapy in direct assistance to victims of torture: a holistic approach to healing and well being</i>	Descriptive	N= 81 children, 378 adults SOT from Manipur, India	Individual and group PT described: Partially. Trauma informed care: exercise (not specified), stretching, dance, MT*, modalities, pain education. Multidisciplinary Humane to Humane Transcultural Centre for Torture Victims	Trauma BA Pain	Did not specify	N/A
Sjölund et al., 2009	<i>Rehabilitating torture survivors</i>	Expert opinion	SOT	Did not specify individual or group PT described: Partially. Trauma, ICF* approach. PT goals to increase BA, physical activity/function, pain management, decrease pain behavior, enhance self-efficacy. Interprofessional	Trauma BA Pain	Did not specify	N/A
Dibaj et al., 2017	<i>An evaluation of combined narrative exposure therapy and physiotherapy for comorbid PTSD and chronic pain in torture survivors</i>	Case series A-B <i>case series</i> design, onset of PT added at 3 time points (after NET* visit 3,6,9) 3 & 6 month follow up	N=6 Middle East, West Africa, the Caucasus	Individual PT described: Partially. Hydrotherapy, sitting exercises; general exercise- not described, pain management strategies (not described) Psychology + PT	BA Pain	60 minutes x 10 sessions	CAPS* PTSD Scale: 2/6 reduced symptoms, 2/6 marked improvement, 2/6 unremitting symptoms. HRSD*: 4/6 decreased, 2/6 no change. BPI: 2/6 improved, 2/6 worsened, 2/6 missing data. NPR*: 2/6 improved, 2/6 worsened, 2/6 missing data
Gueron & Ruiter, 2020	<i>International survey of the utilisation of physiotherapy in treatment centers for survivors of torture</i>	Survey	N=87 centers (42 from Global North & 45 Global South)	Individual + group PT described; Yes. Treatment centers for SOT Medical, psych, counseling, PT, OT	BA Pain	N/A	Most frequently used PT modalities: exercise (85%), MT (75%), massage (70%) or group exercises/ activities (65%)

Author/ Year	Title	Source	Subjects/ Country	Treatment	Identified Themes	Frequency	Outcomes/ Results
Liedl et al., 2011	<i>Physical Activity within a CBT* Intervention Improves Coping with Pain in Traumatized Refugees: Results of a Randomized Controlled Design</i>	RCT (Three arm trial) CBT + BF*, CBT+ BF + exercise/PT, waitlist	N= 36 SOT Balkans, Turkey, other	Individual PT described: Yes. PT instructed HEP*: 20 min/day: stretching (neck, back, and shoulders), endurance training, muscle strength, some PNE at initial session. Psychology (CBT+ BF) + independent PT HEP	BA  Pain	20 minutes daily PT exercise x 10 weeks	PTSD scale Hopkins Symptom Checklist- anxiety Verbal pain rating Pain Coping: Cognitive Pain Coping: Behavioral <b>Significant between group effect for CBT + PT vs CBT* for cognitive coping.</b> <b>No difference in pain intensity between groups</b>
Negron, 2018	<i>Supporting asylum seekers and refugees who suffer chronic pain: an experience</i>	Observational Single arm pre-post treatment	N=192 SOT Sri Lanka, Iran, Eritrea, Iraq, DRC*, Cameroon	Individual PT described: Yes passive ROM*, stretching, isometrics; health information & PNE, MT, HEP (self-massage techniques; essential oils, breathing and stretching exercises) Interprofessional	BA  Pain	1-2 PT sessions	Pain Use of self-help techniques Duration of improvement post-PT 53% reported major reduction in pain. 83% reported using self-help techniques. 26% had >2-week duration of reduced symptoms
Kim & Yu, 2015	<i>Effects of complex MT on PTSD, pain, function, and balance of male torture survivors with chronic low back pain</i>	RCT (Manual therapy + self-exercise vs self-exercise)	N=30 male SOT with chronic low back pain Korea	Individual PT described; Yes Exercise (pelvic tilt, upper abdominal exercises, lumbar stabilization exercises), myofascial release, MET* PT only	BA  Pain	2x/week (MT/MET) 3x/week exercise x 8 weeks	PDSK* for PTSD VAS Korean Oswestry Disability Index Dynamic balance test Between group comparisons significant improvement in all measures in the MT group



Author/ Year	Title	Source	Subjects/ Country	Treatment	Identified Themes	Frequency	Outcomes/ Results
Wang et al., 2016	A novel BPS approach of traumatized victims of torture and war in the post conflict context: a pilot RCT in Kosovo	RCT Parallel arm CBT+ BF+ physical activity/ exercise compared to waitlist	N=34 DIGNITY SOT in Kosovo N=13 CBT+B- F+PT group, 15 waitlist	Group PT described: Partially. BPS; Physical games/ activities session adjusted to "capacity of participants." Psychology+ PT	BA	60-90 min x 10 weeks over 3 months	Mental health Emotional well-being Physical health- chronic pain symp- toms, BMI, handgrip, balance Functioning No differences between groups; limited effect of the intervention
(Nordbrandt et al., 2020)	Trauma-affected refugees treated with basic body awareness therapy or mixed physical activity as augmentation to treatment as usual: a pragmatic RCT	RCT 3-armed, pragmatic comparing TAU* (10 -16 sessions with MD / psychol- ogy + 1-2 sessions with social worker, or TAU + BBAT PT, or TAU + exercise PT	N=338 SOT in Denmark,	Individual PT described; Yes BBAT or PT exercises focusing on "improving strength, endurance, balance and coordination." No intensity or progression described. Competence Centre for Transcul- tural Psychiatry Interprofessional-MD, psychology, social work, PT	BA	60 min/ week x 20 weeks	HTQ- PTSD HSC Quality of life Sheehan Disability Scale Global assessment of functioning Health social function VAS BPI Interoceptive awareness Dynamic Gait Index Senior fitness test All groups improved; no difference between groups

\* BA= body awareness; BBAT= basic body awareness therapy; BPS= biopsychosocial; BF= biofeedback; CAPS= Clinically administered PTSD Scale, CBT= Cogni-  
tive behavioral therapy; COI= Country of origin; DRI = Disability rating index; DRC= Democratic Republic of the Congo; HEP= home exercise program; HRS= Ham-  
ilton Rating of Severe Depression; HSC= Hopkins symptom checklist; HTQ= Harvard Trauma questionnaire; ICF= International Classification of Function-  
ing, Disability and Health; MET= Muscle energy technique; MT= manual therapy; N/A= not applicable; NET= Narrative exposure therapy; NPR= Numerical Pain  
Rating; Pain Mgmt.= pain management; PDSK= Post-traumatic diagnostic scale; PNE= pain neuroscience education; PTSD= post-traumatic stress disorder; RCT=  
randomized controlled trial; ROM= range of motion; SOT= Survivors of torture; TAU= treatment as usual; VAS= Visual analogue scale

**Table 2:** Frequency of Recommended PT Interventions

Type of PT	Frequency (n=15)	Authors
Body awareness	7 (47%)	Alme et al., 2021; Gamble et al., 2020; Gueron et al., 2020; Nielsen, 2014; Sjölund et al., 2009, Karrer, 2020, 2022
Pain education/PNE*	7 (47%)	Gamble et al., 2020; Gueron et al., 2020; Liedl et al., 2011; Nielsen, 2014; Singh et al., 2019, Karrer, 2020, 2022
Strengthening	7 (47%)	Gamble et al., 2020; Gueron et al., 2020; Kim & Yu, 2015; Liedl et al., 2011; Negron, 2018; Nielsen, 2014; Nordbrandt et al., 2020
Trauma-informed model	6 (40%)	Alme et al., 2021; Gamble et al., 2020; Gueron et al., 2020; Nielsen, 2014; Singh et al., 2019; Sjölund et al., 2009
Sleep hygiene	5 (33%)	Gamble et al., 2020; Gueron et al., 2020; Nielsen, 2014, Karrer, 2020, 2022
Stretching	5 (33%)	Gamble et al., 2020; Gueron et al., 2020; Liedl et al., 2011; Negron, 2018; Singh et al., 2019
BBAT*	4 (27%)	Nielsen, 2014; Nordbrandt et al., 2020, Karrer, 2020, 2022
Biopsychosocial approach	4 (27%)	Nielsen, 2014; Wang et al., 2016, Karrer, 2020, 2022
Breathing exercises	4 (27%)	Gamble et al., 2020; Negron, 2018; Nielsen, 2014, Karrer, 2022
Manual Therapy	4 (27%)	Kim & Yu, 2015; Negron, 2018; Nielsen, 2014; Singh et al., 2019
Self-efficacy/advocacy	3 (20%)	Alme et al., 2021; Gueron et al., 2020; Sjölund et al., 2009
Balance	2 (13%)	Gueron et al., 2020; Nordbrandt et al., 2020,
Behavior change principles	2 (13%)	Karrer, 2020, 2022
General exercise (not specified)	2 (13%)	Dibaj et al., 2017; Singh et al., 2019
Physical activity	1 (7%)	Wang et al., 2016
Aerobic exercise	1 (7%)	Gueron et al., 2020
Aquatic therapy	1 (7%)	Dibaj et al., 2017
Mental imagery	1 (7%)	Nielsen, 2014
Pelvic floor exercise	1 (7%)	Gueron et al., 2020

\*PNE= pain neuroscience education; BBAT= basic body awareness therapy

barrier to successful rehabilitation (Ferrari et al., 2019; Raman & Sharma, 2022). Mental imagery has been used for treatment of complex regional pain syndrome, phantom pain, and other chronic pain conditions, and has been found to alter pain sensations. (Bowering et al., 2013; Fardo et al., 2015; Limakatso et al., 2020) These PT interventions fit the body-awareness & empowerment, and pain management themes.

Individual PT sessions were provided or recommended by six sources. (Dibaj et al., 2017; Kim & Yu, 2015; Liedl et al., 2011; Negron, 2018; Nielsen, 2014; Nordbrandt et al., 2020) One source provided group treatments, (Wang et al., 2016) six provided or recommended a combination of both group and individual sessions, (Gamble et al., 2020; Gueron et al., 2020; Gueron & Ruiters, 2020; Karrer, 2022; Karrer et al., 2020; Singh et al., 2019) and two authors did not specify. (Alme et al.,

Table 3: Themes and PT interventions

Identified Themes	PT Interventions
Trauma-Informed Care	Strategies directed at psychological and physical health: avoid re-traumatization development of a therapeutic alliance create a safe environment culturally sensitive patient centered care
Pain Management	PNE Manual therapy Sleep hygiene Mental imagery
Body-awareness & empowerment	Body awareness exercise BBAT Breathing exercise Pelvic floor exercise Self-efficacy Self-advocacy

2021; Sjölund et al., 2009) All but three sources recommended or included interprofessional care when working with SOT. (Dibaj et al., 2017; Gamble et al., 2020; Gueron et al., 2020; Gueron & Ruiter, 2020; Karrer, 2022; Liedl et al., 2011; Negron, 2018; Nielsen, 2014; Nordbrandt et al., 2020; Singh et al., 2019; Sjölund et al., 2009; Wang et al., 2016).

*Thematic Application*

We categorized the described interventions from our 15 sources thematically. In this thematic application, eight sources recommended and described care utilizing all three themes (trauma-informed care, body-awareness & empowerment, pain management) (Table 1). (Alme et al., 2021; Gamble et al., 2020; Gueron et al., 2020; Nielsen, 2014; Singh et al., 2019; Sjölund et al., 2009) The remaining sources recommended interventions using one or two of the themes: five utilized interventions characterized by both the body-awareness & empowerment and pain management themes, (Dibaj et al., 2017; Gueron & Ruiter, 2020; Kim & Yu, 2015; Liedl et al., 2011; Negron, 2018) while two used interventions solely characterized by the body-awareness & empowerment theme. (Nordbrandt et al., 2020; Wang et al., 2016) Several PT interventions could be considered in both the pain management and the body-awareness & empowerment themes as the effects of the treatment can address both pain and movement (Table 3).

*Research Outcomes*

The ten papers that sought to substantiate PT interventions for SOT included one case series (Dibaj et al., 2017) (n=6), one sur-

vey (Gueron & Ruiter, 2020) (n=87), three pre-post observational studies (Gueron et al., 2020; Karrer et al., 2020; Negron, 2018) (n= 192, 38, and 1183), and five randomized controlled trials (Gamble et al., 2020; Kim & Yu, 2015; Liedl et al., 2011; Nordbrandt et al., 2020; Wang et al., 2016) (Table 1). Sample size ranged from 30-36 participants in four of the randomized controlled trials, while the 5<sup>th</sup> had 338 participants divided among 3 treatment groups.

Outcomes of the randomized controlled trials were mixed. In comparing a combination of cognitive behavioral therapy (CBT), biofeedback (BF) and PT consisting of physical activity and exercise to a waitlist control group, there were no significant differences between groups, and limited effect of the intervention (n=34). (Wang et al., 2016) When comparing usual care (MD and psychology) to usual care + BBAT PT, and usual care + PT general exercises, all participants improved, with no between group differences (n=338). (Nordbrandt et al., 2020) Both these trials used interventions categorized by one theme, the body-awareness & empowerment theme. Refer to Table 1 for outcome measures used and intervention specifics.

In comparing CBT+BF to CBT+BF+PT led exercises, there were significant improvements in cognitive coping strategies in the PT group, but no difference in pain intensity between the groups (n=36). (Liedl et al., 2011) A fourth study found that manual therapy and PT supervised exercise resulted in significant improvements in all measures as compared to an independent 3x/week self-exercise regime (n=30). (Kim & Yu, 2015) These two studies incorporated both the body-awareness & empowerment

and pain management themes. The fifth trial, a combination of PT and psychology sessions compared to a waitlist control group demonstrated statistically significant, within and between group changes, for all measures ( $n=30$ ). (Gamble et al., 2020) This study utilized all three themes: trauma informed approach, body-awareness and empowerment and pain management.

### Discussion

The main aim of our scoping review was to identify and outline recommendations for physical therapists when working with SOT. We identified fifteen sources of evidence describing PT treatment for SOT. Of these sources, three styles of source reporting emerged: 1) presenting or examining a trauma-informed biopsychosocial approach, 2) examination of PT for a specific condition such as PTSD, or 3) examination of a specific PT intervention such as manual therapy. A trauma-informed biopsychosocial approach addresses the multifaceted conditions challenging SOT. Eight sources described activities that reflect this trauma informed model. (Alme et al., 2021; Gamble et al., 2020; Gueron et al., 2020; Karrer, 2022; Karrer et al., 2020; Nielsen, 2014; Singh et al., 2019; Sjölund et al., 2009) Other sources focused on methods to treat symptoms of specific conditions. Post-traumatic stress and its contribution to chronic pain in SOT was frequently targeted through interventions including varying combinations of CBT, biofeedback, Basic Body Awareness Therapy, and exercise. (Dibaj et al., 2017; Liedl et al., 2011; Nordbrandt et al., 2020; Wang et al., 2016) Lastly, a few sources examined a specific PT intervention. The impact of adding manual therapy to reduce pain, PTSD symptoms, and improve function was individually assessed by two sources. (Kim & Yu, 2015; Negron, 2018) The differences in the treatment approach and style of source reporting made it challenging to compare programs and outcomes. Therefore we categorized the PT treatment into themes following the trauma informed model described by the PREP collaboration in order to understand and present the data. (Alme et al., 2021) Three main themes were used: a trauma-informed approach, interventions that address body-awareness & empowerment, and pain management.

We found eight sources who included treatment inclusive of all three themes in their PT program for working with SOT. Of these eight sources, only three were research studies examining outcomes of the approach. (Gamble et al., 2020; Gueron et al., 2020; Karrer et al., 2020) There were positive findings, but results must be taken cautiously due to design limitations (small sample sizes and lack of a control group in two of the sources). Studies using only one treatment theme (body-awareness & empowerment) resulted in no between group differences; of the studies using only one treatment theme, one was appropriately

powered (Nordbrandt et al., 2020) and one was not (Wang et al., 2016). Studies using two treatment themes (body-awareness & empowerment and pain management) had mixed results. (Kim & Yu, 2015; Liedl et al., 2011) We suspect that utilizing PT interventions related to all three themes helps ensure therapists are providing a holistic, comprehensive plan of care to address the survivors' complex needs. However, larger, appropriately powered studies are needed to assess the impact of this PT approach on outcomes of pain and disability in SOT.

The physical therapy mode of delivery was largely performed via individual sessions. This is appropriate particularly in the early stages of treatment, in order to establish a trusting, therapeutic alliance with the survivor. We recommend individual assessment and treatment for SOT. As treatment progresses, group sessions are an optional mode of delivery and may enhance outcomes. (Karrer et al., 2020; Lakke & Meerman, 2016) Dosage of the prescribed interventions could also impact outcomes. The frequency of the PT programs varied from one to three times per week, with duration ranging from one to 20 weeks. Clarity around recommendations for frequency as well as intensity of PT from future studies is needed.

Eleven of our sources recommended or described interprofessional care for SOT. This included PT treatment in combination with psychological, social, or medical services. Cognitive behavioral therapy and biofeedback interventions described in our sources were provided by a psychology team. Similar to treatment recommendations for chronic pain, we recommend interprofessional collaborations to meet the medical, physical, and mental health needs of SOT. (Cohen et al., 2021; Dale & Stacey, 2016; Fitzcharles et al., 2021; Flynn, 2020; Holten & Veasey Sr., 2008)

Our sources were largely from European countries at treatment centers designed for refugees and SOT. The variability in country of origin of the survivors speaks to the global need for education and training of physical therapists. The World Confederation for Physical Therapy (WCPT) calls on physical therapists globally to adhere to principles specifically condemning any practice of torture. (WCPT, 2023) Additionally, the WCPT calls for entry level PT program curriculum to include principles for the treatment of vulnerable populations, including those with physical and psychological effects of torture. Guidelines and recommendations exist to help clinicians in their quest to help improve the lives of SOT. (Alme et al., 2021; Karrer, 2022; Nielsen, 2014) However, larger controlled trials examining the effect of these methods are warranted. Based on the available evidence, allocating resources to PT treatment programs for SOT is a feasible and whole-person approach to address the complex mental and physical health

needs of this population. With over 100 million displaced persons globally, the need is high for physical therapists to understand trauma-informed care and implement appropriate interventions for SOT and for those who have undergone trauma due to forced migration events.

It is possible that relevant sources in other databases, or grey literature, were not included in this review. We used a rigorous search strategy and collaboration with a research librarian to mitigate this threat. A limitation of our review is the availability of data from several of our sources. For example, some did not specify the exact PT treatment, frequency, or mode of intervention. Our review included sources with varying levels of methodological rigor, which we purposefully allowed to understand the extent of the literature. Described treatment preferences may be regional as seen by BBAT, which is not routinely prescribed or practiced outside of Europe. Lastly, many SOT have a history of head injury and none of the sources described any type of concussion screening or treatment; this area of rehabilitation may be underutilized for this group of individuals.

### Conclusions

Our review describes the scope of the literature for the physical therapy treatment of SOT. There is variability in PT approach and choice of intervention. A trauma-informed PT approach, coordinated with pain management, and body-awareness & empowerment interventions may address the complex needs of survivors. However, rigorous studies of this approach are lacking. As the number of displaced persons continues to rise globally, and human rights violations persist, we must be prepared to care for these vulnerable people. Physical therapists are encouraged to utilize a holistic approach, and to examine outcomes of this approach for SOT.

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### References

- Alme, M. N., Jalovic, D., Fricker, I., Peters, S., Vårdal, R., Rocca, P., Hale, W., Alagöz, E., Leskovsek, N., Benyaich, A., McGowan, E., Pettersson, A., Bostrom, C., Giusti, L. M., Landry, M., Lowe, R., Wilhelmsen, K. T., & van Wijchen, J. (2021). Collaborative effort to increase the physiotherapist's competency in rehabilitation of torture survivors. *61-66*. <https://doi.org/10.7146/torture.v30i3.121793>
- Amris, K., & Prip, K. (2000, March 3). *Physiotherapy for Torture Victims*. <http://doc.rct.dk/doc/TORT2000-3-3.pdf>
- Amris, K., & Williams, A. C. de C. (2015). Managing chronic pain in survivors of torture. *Pain Management*, *5*(1), 5–12. <https://doi.org/10.2217/pmt.14.50>
- Baird, E., Williams, A. C. de C., Hearn, L., & Amris, K. (2017). Interventions for treating persistent pain in survivors of torture. *The Cochrane Database of Systematic Reviews*, *8*, CD012051. <https://doi.org/10.1002/14651858.CD012051.pub2>
- Berthold, S. M., Polatin, P., Mollica, R., Higson-Smith, C., Streets, F. J., Kelly, C. M., & Lavelle, J. (2020). The complex care of a torture survivor in the United States: The case of “Joshua.” *Torture Journal*, *30*(1), Article 1. <https://doi.org/10.7146/torture.v30i1.113063>
- Bowering, K. J., O'Connell, N. E., Tabor, A., Catley, M. J., Leake, H. B., Moseley, G. L., & Stanton, T. R. (2013). The Effects of Graded Motor Imagery and Its Components on Chronic Pain: A Systematic Review and Meta-Analysis. *The Journal of Pain*, *14*(1), 3–13. <https://doi.org/10.1016/j.jpain.2012.09.007>
- Carinci, A. J., Mehta, P., & Christo, P. J. (2010). Chronic pain in torture victims. *Current Pain and Headache Reports*, *14*(2), 73–79. <https://doi.org/10.1007/s11916-010-0101-2>
- Cohen, S. P., Vase, L., & Hooten, W. M. (2021). Chronic pain: An update on burden, best practices, and new advances. *The Lancet*, *397*(10289), 2082–2097. [https://doi.org/10.1016/S0140-6736\(21\)00393-7](https://doi.org/10.1016/S0140-6736(21)00393-7)
- Dale, R., & Stacey, B. (2016). Multimodal Treatment of Chronic Pain. *The Medical Clinics of North America*, *100*(1), 55–64. <https://doi.org/10.1016/j.mcna.2015.08.012>
- Dibaj, I., Halvorsen, J. Ø., Kennair, L. E. O., & Stenmark, H. I. (2017). An evaluation of combined narrative exposure therapy and physiotherapy for comorbid PTSD and chronic pain in torture survivors. *Torture Journal*, *27*(1), Article 1. <https://doi.org/10.7146/torture.v27i1.26534>
- Doherty, S. M., Craig, R., Gardani, M., & McMillan, T. M. (2016). Head injury in asylum seekers and refugees referred with psychological trauma. *Global Mental Health*, *3*, e28. <https://doi.org/10.1017/gmh.2016.23>
- Duo, L., Yu, X., Hu, R., Duan, X., Zhou, J., & Wang, K. (2023). Sleep disorders in chronic pain and its neurochemical mechanisms: A narrative review. *Frontiers in Psychiatry*, *14*. <https://www.frontiersin.org/articles/10.3389/fpsy.2023.1157790>
- Edwards, R. R., Dworkin, R. H., Sullivan, M. D., Turk, D., & Wasan, A. D. (2016). The role of psychosocial processes in the development and maintenance of chronic pain disorders. *The Journal of Pain : Official Journal of the American Pain Society*, *17*(9 Suppl), T70–T92. <https://doi.org/10.1016/j.jpain.2016.01.001>
- Fardo, F., Allen, M., Jegindo, E.-M. E., Angrilli, A., & Roepstorff, A. (2015). Neurocognitive evidence for mental imagery-driven hypoalgesic and hyperalgesic pain regulation. *Neuroimage*, *120*, 350–361. <https://doi.org/10.1016/j.neuroimage.2015.07.008>
- Ferrari, S., Vanti, C., Pellizzer, M., Dozza, L., Monticone, M., & Pillastrini, P. (2019). Is there a relationship between self-efficacy, disability, pain and sociodemographic characteristics in chronic low back pain? A multicenter retrospective analysis. *Archives of Physiotherapy*, *9*(1), 9. <https://doi.org/10.1186/s40945-019-0061-8>
- Fitzcharles, M.-A., Cohen, S. P., Clauw, D. J., Littlejohn, G., Usui, C., & Häuser, W. (2021). Nociceptive pain: Towards

- an understanding of prevalent pain conditions. *The Lancet*, 397(10289), 2098–2110. [https://doi.org/10.1016/S0140-6736\(21\)00392-5](https://doi.org/10.1016/S0140-6736(21)00392-5)
- Flynn, D. M. (2020). Chronic Musculoskeletal Pain: Nonpharmacologic, Noninvasive Treatments. *American Family Physician*, 102(8), 465–477.
- Gamble, A., Ahmed, A. M. A., Rahim, S. H., & Hartman, J. (2020). The effects of a combined psychotherapy and physiotherapy group treatment program for survivors of torture incarcerated in an adult prison in Kurdistan, Iraq: A pilot study. *Torture Journal*, 30(2), Article 2. <https://doi.org/10.7146/torture.v30i2.119199>
- George, S. Z., Fritz, J. M., Silfies, S. P., Schneider, M. J., Beneciuk, J. M., Lentz, T. A., Gilliam, J. R., Hendren, S., & Norman, K. S. (2021). Interventions for the Management of Acute and Chronic Low Back Pain: Revision 2021. *Journal of Orthopaedic & Sports Physical Therapy*, 51(11), CPG1–CPG60. <https://doi.org/10.2519/jospt.2021.0304>
- Gueron, L. J. P., Amoyi, A., Chao, W., Chepngetich, J., Kibet, J. J., Nyambok, S., & Wesonga, J. (2020). Group physiotherapy with survivors of torture in urban and camp settings in Jordan and Kenya. *Torture Journal*, 30(3), Article 3. <https://doi.org/10.7146/torture.v30i3.121785>
- Gueron, L. J. P., & Ruiter, M. de. (2020). International survey of the utilisation of physiotherapy in treatment centers for survivors of torture. *Torture Journal*, 30(3), Article 3. <https://doi.org/10.7146/torture.v30i3.122775>
- HealTorture. (2024). *Improving Well-Being for Refugees in Primary Care: A Toolkit for Providers*. Heal Torture. <https://healtorture.org/improving-well-being-for-refugees-in-primary-care-a-toolkit-for-providers/>
- Hoegh, M. (2022). Pain Science in Practice: What Is Pain Neuroscience? Part 1. *Journal of Orthopaedic & Sports Physical Therapy*, 52(4), 163–165.
- Holten, K. B., & Veasey Sr., G. D. (2008). Managing chronic pain: What's the best approach? *Journal of Family Practice*, 57(12), 806–811.
- IASP. (2014). *IASP Taxonomy—IASP*. <http://www.iasp-pain.org/Taxonomy>
- IATBBAT. (2018). *Basic Body Awareness Therapy (BBAT) | International Association of Teachers in Basic Body Awareness Therapy | Kineeo—Jordy den Engelsman*. <http://iatbbat.com/basic-body-awareness-therap.html>
- Karrer, A.-M. (2022). *DIGNITY Implementing Manual*.
- Karrer, A.-M., Hansen, A. K. V., Nordin, L., & Oestergaard, M.-L. D. (2020). Acceptability of a physiotherapeutic pain school treatment in trauma-affected populations in the Middle Eastern & Northern African region. *Torture Journal*, 30(3), Article 3. <https://doi.org/10.7146/torture.v30i3.122375>
- Keshk, M., Harrison, R., Kizito, W., Psarra, C., Owiti, P., Timire, C., Camacho, M. M., De Maio, G., Safwat, H., Matboly, A., & Van den Bergh, R. (2021). Offering care for victims of torture among a migrant population in a transit country: A descriptive study in a dedicated clinic from January 2017 to June 2019. *International Health*, 13(2), 89–97. <https://doi.org/10.1093/inthealth/ihaa068>
- Kim, H. J., & Yu, S. H. (2015). Effects of complex manual therapy on PTSD, pain, function, and balance of male torture survivors with chronic low back pain. *Journal of Physical Therapy Science*, 27(9), 2763–2766. <https://doi.org/10.1589/jpts.27.2763>
- Lakke, S. E., & Meerman, S. (2016). Does working alliance have an influence on pain and physical functioning in patients with chronic musculoskeletal pain; a systematic review. *Journal of Compassionate Health Care*, 3(1), Article 1. <https://doi.org/10.1186/s40639-016-0018-7>
- Liedl, A., Müller, J., Morina, N., Karl, A., Denke, C., & Knaevelsrud, C. (2011). Retracted: Physical Activity within a CBT Intervention Improves Coping with Pain in Traumatized Refugees: Results of a Randomized Controlled Design. *Pain Medicine*, 12(2), 234–245. <https://doi.org/10.1111/j.1526-4637.2010.01040.x>
- Limakatso, K., Madden, V. J., Manie, S., & Parker, R. (2020). The effectiveness of graded motor imagery for reducing phantom limb pain in amputees: A randomised controlled trial. *Physiotherapy*, 109, 65–74. <https://doi.org/10.1016/j.physio.2019.06.009>
- Longstreth, G. F., Attix, C., & Kuck, J. (2022). Torture Survivors and Asylum: Legal, Medical, and Psychological Perspectives. *The American Journal of Medicine*, S0002-9343(22)00808-7. <https://doi.org/10.1016/j.amjmed.2022.10.014>
- Main, C. J., & George, S. Z. (2011). Psychologically Informed Practice for Management of Low Back Pain: Future Directions in Practice and Research. *Physical Therapy*, 91(5), 820–824. <https://doi.org/10.2522/ptj.20110060>
- McKinney, M. M. (2011). Treatment of survivors of torture: Spiritual domain. *Torture : Quarterly Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 21(1), 61–66.
- McPherson, J. I. (2019). Traumatic brain injury among refugees and asylum seekers. *Disability and Rehabilitation*, 41(10), 1238–1242. <https://doi.org/10.1080/09638288.2017.1422038>
- Mindtools. (2023). *Centering—Maintaining Focus in Stressful Situations*. Mindtools. <https://www.mindtools.com/ashwpqm/centering>
- Negron, A. (2018). Supporting asylum seekers and refugees who suffer chronic pain: An experience. *International Journal of Migration, Health, and Social Care; Hove*, 14(1), 55–67. <http://dx.doi.org/10.1108/IJMHS-02-2016-0011>
- Nielsen, H. (2014). *Interventions for Physiotherapists Working with torture Survivors*. Interventions for Physiotherapists Working with Torture Survivors. <https://www.dignity.dk/wp-content/uploads/publication-series-6.pdf>
- Nordbrandt, M. S., Sonne, C., Mortensen, E. L., & Carlsson, J. (2020). Trauma-affected refugees treated with basic body awareness therapy or mixed physical activity as augmentation to treatment as usual—A pragmatic randomised controlled trial. *PLoS One*, 15(3), e0230300. <https://doi.org/10.1371/journal.pone.0230300>
- Perrot, S., Cohen, M., Barke, A., Korwisi, B., Rief, W., Treede, R.-D., & Pain, T. I. T. for the C. of C. (2019). The IASP classification of chronic pain for ICD-11: Chronic secondary musculoskeletal pain. *PAIN*, 160(1), 77. <https://doi.org/10.1097/j.pain.0000000000001389>
- Rabin, M., & Willard, C. (2014). Torture and Refugees. In A. Annamalai (Ed.), *Refugee Health Care: An Essential Medical Guide* (pp. 181–192). Springer. [https://doi.org/10.1007/978-1-4939-0271-2\\_14](https://doi.org/10.1007/978-1-4939-0271-2_14)
- Raman, S., & Sharma, P. (2022). Self-efficacy as a mediator of

- the relationship between pain and disability in chronic pain patients: A narrative review. *Bulletin of Faculty of Physical Therapy*, 27(1), 42. <https://doi.org/10.1186/s43161-022-00101-y>
- Siengsakon, C. F., Al-dughmi, M., & Stevens, S. (2017). Sleep Health Promotion: Practical Information for Physical Therapists. *Physical Therapy*, 97(8), 826–836. <https://doi.org/10.1093/ptj/pzx057>
- Sigvardsson, E., Vaez, M., Rydholm Hedman, A.-M., & Saboonchi, F. (2016). Prevalence of torture and other warrelated traumatic events in forced migrants: A systematic review. *Torture : Quarterly Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 26(2), 41–73.
- Singh, T. D., Roy, L. D., Thoibi, P., Kumari, N., Devi, T. S., & Surjit, N. (2019). The Role of Physiotherapy in Direct Assistance to Victims of Torture: A Holistic Approach to Healing and Wellbeing. *IRA-International Journal of Management & Social Sciences (ISSN 2455-2267)*, 5(4). <https://doi.org/10.21013/jms.v14.n2sp.p6>
- Sjölund, B. H., Kastrup, M., Montgomery, E., & Persson, A. L. (2009). Rehabilitating torture survivors. *Journal of Rehabilitation Medicine*, 41(9), 689–696. <https://doi.org/10.2340/16501977-0426>
- Tricco, A. C., Lillie, E., Zarin, W., O'Brien, K. K., Colquhoun, H., Levac, D., Moher, D., Peters, M. D. J., Horsley, T., Weeks, L., Hempel, S., Akl, E. A., Chang, C., McGowan, J., Stewart, L., Hartling, L., Aldcroft, A., Wilson, M. G., Garrity, C., ... Straus, S. E. (2018). PRISMA Extension for Scoping Reviews (PRISMA-ScR): Checklist and Explanation. *Annals of Internal Medicine*, 169(7), 467–473. <https://doi.org/10.7326/M18-0850>
- Tsur, N., Defrin, R., Shahar, G., & Solomon, Z. (2020). Dysfunctional pain perception and modulation among torture survivors: The role of pain personification. *Journal of Affective Disorders*, 265, 10–17. <https://doi.org/10.1016/j.jad.2020.01.031>
- UN General Assembly. (1984). *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
- UNHCR. (2022). *Istanbul protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Professional Series # 8). Geneva. United Nations High Commissioner for Human Rights-(Updated version-Original 1999)
- UNHCR. (2022). *Global Trends Report 2022*. UNHCR. <https://www.unhcr.org/global-trends-report-2022>
- Wang, S.-J., Bytyçi, A., Izeti, S., Kallaba, M., Rushiti, F., Montgomery, E., & Modvig, J. (2016). A novel bio-psycho-social approach for rehabilitation of traumatized victims of torture and war in the post-conflict context: A pilot randomized controlled trial in Kosovo. *Conflict and Health*, 10, 34. <https://doi.org/10.1186/s13031-016-0100-y>
- WCPT. (2023). *Policy Statement: Torture*. World Physiotherapy. <https://world.physio/policy/ps-torture>
- Wijma, A. J., Wilgen, C. P. van, Meeus, M., & Nijs, J. (2016). Clinical biopsychosocial physiotherapy assessment of patients with chronic pain: The first step in pain neuroscience education. *Physiotherapy Theory and Practice*, 32(5), 368–384. <https://doi.org/10.1080/09593985.2016.1194651>

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# Experience and struggle of a survivor of eye mutilation by rubber bullets

Carles Guillot<sup>1</sup>

1 Survivor and Founder Member of Stop Bales de Goma / Stop Rubber Bullets

My name is Carles Guillot and I am 52 years old. On 17 July 2001, 23 years ago now, during a protest against the illegal assault and eviction of a squatted house, the Kasa de la Muntanya, a national police officer shot me point-blank in the face and permanently damaged my right eyeball. As the neighbourhood was taken over by the police, we had to wait a few hours before we could go to a hospital. Finally, some colleagues took me to the Bellvitge Hospital, the furthest hospital in the area, to avoid being identified by the police. The prognosis was clear: I would be one-eyed for life.

The first days and weeks were very hard. Pain, headaches, and anger, a lot of anger.

I was fortunate to have the support of my family and my fellow fighters at all times. I come from a family of fighters. My grandmother was persecuted and imprisoned by Franco's regime and my mother, an avowed feminist, was already involved in the university struggles of the early 1970s. I remember that my mother, already in hospital, asked me if I thought it was worth going to show solidarity with the people in the squatted house. And I agree: solidarity is our best weapon, without putting something at risk, no matter how dramatic and painful it may be, change will never be achieved. As I said, I also had the support of my colleagues. At that time I was linked to many organisations of social struggle (the squatting movement, the anti-fascist platform, collectives against the capitalistic Europe, solidarity with the Zapatista movement, etc.) and they all showed me their support and solidarity. There were some marches and acts of protest against what had happened to me, which, I have to say, filled me up with pride. Somehow, I felt no different from many other people who suffered (and still suffer) the consequences of police violence. I think that, being a member of these political and social organisations, made me aware that, when you stand up to power, it reacts without mercy using violence against you.

## Anger

At first, I had to adapt to my new reality. Everyday tasks became difficult. And what I felt was anger. Anger against the police,

against the state, against this "status quo" that the West has created and that forces the vast majority of the world's population to live in precarious conditions. Think that with only one eye we lose the depth of field that a bifocal vision gives. We see everything in two dimensions, and therefore, something as simple as pouring water into a glass from a bottle or a jug becomes complicated. You never know if the bottle is at the same distance as the glass, and many times, I would spill the water I was trying to pour. Or I would hit the right side of my face and forehead as I couldn't see what was on that side. With each failure, with each blow, the rage would appear again.

I don't know what it feels like to lose a hand or any other part of your body, so I can't (and don't want to) compare. But I know that losing an eye is terrible. Every day, every morning when you look into the mirror and you don't recognise the image it projects of you, it's heartbreaking. Seeing yourself deformed, not liking yourself, generates a feeling of self-rejection. You wonder if anyone will like you, if they will find you attractive, and your whole sex-affective life is turned upside down. Doubts, insecurities, fears, take over. And again, anger.

## Prosthesis

Public health care in this country works well, and I was immediately given a prosthetic eye. At first I wore it, but over time I noticed that people looked at my ceramic eye (why is it that we are always attracted to people's physical defects?) and I felt that they weren't looking at me, but at the void left by my eye. So, I started to put on patches. On the one hand because I found myself more attractive, and, on the other, because it hid my mutilation and, I suppose, my trauma.

Little by little I got used to wearing nothing, to show my face as it was: mutilated. This made me realise that especially the children would stare at my wound and ask me what had happened to me (alas, the innocence of childhood). This allowed me to explain to them that I had been mutilated by a policeman who shot me with his gun (I never spoke of an accident; it wasn't. It was a deliberate act), and to explain to them and their families that the police use lethal weapons to disperse



demonstrators and repress protests. I haven't worn the prosthesis for years, and I've got used to people staring at me.

### The judicial route

Parallel to that, I started my justice path. Not because I believed in this path to find redress (my trust in state justice was, and is, very limited), but because my mother insisted. She told me: "Do it, so that it is known and to prevent it from happening to anyone else".

First of all, I filed a criminal complaint. That meant trying to find the policeman who fired the shots so that a formal charge could be made. In this country, you can't file a criminal complaint if you don't identify the person responsible. And I was fortunate enough to be able to do that. In a judicial process parallel to mine, in which they were trying to resolve what had happened inside the Kasa de la Muntanya at the time of the eviction and the subsequent arrests, a policeman who had participated in the operation declared that he had not entered the house, that he had remained outside, and that at a given moment, he had shot at the people who were approaching the house. He placed himself in the exact spot from where they shot at me. So, we directed our accusation at him. Officer 77803.

That investigation by the examining magistrate's court lasted about a year, and although the policeman later declared that he had only fired blanks (i.e. shot without ammunition), the judge told us that there was enough evidence to open proceedings against him. However, that judge was replaced in September of the same year. The new magistrate rejected the accusations and decreed that there was not enough evidence to charge the policeman, so it was not possible to know who was responsible for the shooting and that I was only left with the administrative route of a patrimonial claim, as he did admit that my injury was due to a shot fired by an officer. The patrimonial claim means that the guilty party will not be punished and will remain unpunished, but the State is sued as the party ultimately responsible so that it is obliged to make *reparation* (the word sounds like a mockery), which is usually basically financial compensation.

From this point on, I began a veritable judicial ordeal that took me through different judicial bodies (Provincial Court, National Court, Supreme Court, Constitutional Court), which in short ended up ruling the same thing: I had voluntarily placed myself in a situation of risk by protesting and showing my rejection to a police eviction (even if it was illegal) and, therefore, I had to assume the consequences of it. When the possibilities of redress in the Spanish justice system came to an end, I decided to take my case to the Court of Human Rights in Strasbourg, but the Court did not even accept it. They never

said why. Thus, culminating more than 14 years of litigation against the Spanish State.

As you can imagine, this whole never-ending process was exhausting, hard. Each rejection, each judicial setback, fell like a slab of the overwhelming weight of the State's power, which was no more bearable for being so well known. Each refusal generated anger, anguish and impotence at the same time. And a lot of economic expense.

Fortunately, together with my colleagues, we were able to raise money by organising parties, concerts, cultural events and even crowdfunding to raise funds to be able to pay for all these legal proceedings. I would like to mention the lawyers who handled my case during those years and who did everything possible to reach a successful outcome, even if we did not defeat the beast. As we say, the only fight you lose is the one you give up. And they never gave up. That was part of my life from 2001 to 2015.

### The wave of repression and the response from the victims: STOP Rubber Bullets

During 2009 and 2010, Catalonia experienced a wave of repression by the new autonomous police (the one that was sold to us as more modern and democratic). In those years, and in the context of sporting celebrations (victories of FC Barcelona in the Champions League, La Liga and the Spanish national team in the World Cup), the Brimo<sup>1</sup> seriously injured and mutilated Jordi Naval, Jordi Sallent and Òscar Alpuente, who all lost an eye while celebrating their team's victory, while Edgar López was shot in the rib cage causing serious and irreversible coronary injuries and necrosis in a part of his heart. A few days earlier, during the champions league' celebrations, Gerard Molins had been shot in the ear, which caused him to suffer from vertigo for 6 months. Nicola Tanno, a young Italian resident in Barcelona, was mutilated by a police shot during the World Cup celebrations on 12 July 2010. A few months earlier, during the general strike in March, two other young people had lost an eye to projectiles. The police seemed to have taken a liking to shooting protesters in the head.

That same year, and encouraged by Nicola, who went looking for all of us, we decided to create the Stop Rubber Bullets Association (*Stop Bales de Goma* in Catalan). Our initial idea was to make the consequences of police brutality visible, to denounce the impunity of police officers in the face of these acts and to raise awareness in society and public opinion of the need

1 BRIMO: Mobile Brigade. These are anti-riot units of the regional police, the Mossos d'Esquadra, which depend on the regional government, the Generalitat de Catalunya.

to ban this weaponry. Let's think that during those years, and all previous years, the idea was widespread that if police had beaten or shot at you during a demonstration or in any other context, it was because you had done something wrong. In addition, another fundamental reason to meet and get to know each other was to be able to share our experiences and our daily miseries, our fears and our insecurities. There is no one better than someone who has been through what you have been through, to understand and support you.

So, some of those affected got together with people who supported our cause and we began to move forward. From that moment on, we carried out a few actions of denunciation in the streets and through social networks, with videos and "spots" that were easy to visualise, and an internal debate was generated about whether we should also question the political parties.

It was clear that in order to achieve a ban on rubber bullets, laws and regulations had to be changed. And these can only be changed by parliaments. Therefore, we needed the intervention of political parties. Nonetheless, some of us did not feel comfortable talking to those who for years had supported this police model and who used disproportionate police repression to attack political opponents. In the end, we decided that those who felt up to it would play that role, while the rest of us would continue to think and design new actions on the street. We didn't divide the work, but rather everyone did what they felt comfortable with or what didn't generate too many internal contradictions.

### **The meaning of political action: internal debates**

We contacted some politicians and asked for the creation of a commission to study rubber bullets, but the plenary of the Parliament rejected it. Yet, we learned something very important from this experience: none of the members of Parliament knew anything about how kinetic energy projectiles in general and rubber bullets in particular work. That is to say, those who in theory should control the correct functioning of the police forces know neither the weaponry that the police use, nor their protocols, nor their regulations, nor the very serious repercussions for physical integrity and life. They simply rely on what the police unions tell them (that must be the only union they obey). When we did some digging in this direction, we also realised the enormous power that the police unions have when it comes to designing the regulations that should be used to control their actions.

The association went from being a group of mutilated people, "victims" of police violence, to becoming a political collective. At first, some of the comrades did not understand why it had happened to them, if they were doing "nothing wrong".

They were innocent. That was a very interesting debate, because it meant that if they didn't deserve it because they weren't doing "anything", it indirectly meant that those who were doing something did deserve it. It was very nice to see how they changed their perspective and realise that it doesn't matter whether one is "innocent" or not; but that nobody deserves to end up mutilated, nor for breaking a shop window, neither for setting up a barricade to defend yourself from their aggressions. That was one of the moments when the collective started to become politicised.

Another of the big debates we had during those early years was about the terminology we used. Let me explain. It was very common to talk about "rubber balls" instead of "rubber bullets". And in that term, the word "balls" resonates in the collective imagination as less harmful, because it evokes play, something harmless and not pain, mutilation or death. If we wanted to begin to show the seriousness of the injuries that these projectiles cause, we had to talk about "bullets", for that is what they are.

There continue to be more and more cases.

The year 2012 was particularly tragic. During the first general strike of that year, Xuban Nafarrete was hit in the head in Gasteiz. As on previous occasions, we took an interest in him and have maintained a cordial and mutually supportive relationship with his family and entourage. In April, during the celebration of Athletic Bilbao's victory in a European match, the Basque regional police, the Ertzaintza, shot Íñigo Cabacas (Pitu to his friends) in the head. He died in hospital four days later, without waking up from the coma he went into after being hit by a rubber bullet<sup>2</sup>. His friends, relatives and people from other anti-repressive collectives organised themselves to denounce the case, and we immediately got in touch with them to help in any way we could and to show our solidarity.

The mutilation of other people by police violence has always made me feel pain and anger, but at least we could say that we had survived, that we could go on, for better or worse, with our lives. Pitu did not. That death affected all of us very much.

Still in a state of shock after Íñigo's death, in July of that year, during the miners' "Black March" in Madrid, Chelo Baudín was shot in the back. She was in the ICU for a month and a half, debating between life and death. The injuries caused by the impact of the rubber bullet were very serious: pneumothorax, several broken ribs and vertebrae and problems in the

2 It was not the first time that someone was killed by rubber bullets in Spain. Rosa Zarra died in 1995 after being hit by a rubber bullet in the abdomen during a demonstration in the context of the armed struggle of the Basque organisation ETA, but it was the first murder since we were organised and warned about the lethal power of these weapons.

liver and kidneys that have left her with sequelae and a chronic illness. In the general strike called in Eukal Herria in September, Aingeru Zudaire lost most of the sight in his eye when he was also hit by a rubber bullet. With Aigeru, over time, we have created a great friendship and he is a member of the Stop Balas de Goma association.

### **Ester Quintana : the political class on the ropes**

On November 14th, as part of the united demonstration for the general strike, Ester Quintana was shot in the head and taken to hospital. She lost her left eye and part of the bones in her face had to be reconstructed. That aggression would mark a turning point in our struggle.

There are many factors that determined that moment. I think the fact that she was the first woman in Catalonia known to have been mutilated by a rubber bullet made her seem more vulnerable and “innocent”. Things of the patriarchy, I suppose. But also the way she and her entourage handled the situation, confronting the situation and speaking from a more human and at first less “political” position. This made people sympathise with her and the misfortune that had befallen her.

The management of the political and police authorities was nefarious, as they initially chose to publicly deny the facts. However, each denial of the facts by the police was answered the next day with videos that proved Ester’s version. So, for example, the police denied having fired in that area and the next day, videos appeared, sent by people who were in the area at the time of the demonstration, in which police officers were shooting. I think they had to rectify this publicly up to five times.

A collective, “Ojo con tu Ojo” (Eye with your Eye) was organised around them, which was very active and proposed a series of symbolic actions that challenged civil society. From our side, “Stop Bales de Goma”, we invited them to meet us and to join forces, just like the rest of the people we knew who had been injured by kinetic energy projectiles. And we met one day at El Lokal, an emblematic space in libertarian Barcelona. From that meeting, a deep collaboration, companionship and friendship was born, and to the day, has been solidified.

From that moment on, Ester Quintana became a point of reference in the fight to ban rubber bullets. At the beginning she acted with her collective, with whom we coordinated actions and acts of denunciation, and we continued to focus on our own, which at that time was the preparation of a dossier and the campaign “*Municipalities free of rubber bullets*”. This campaign, which persists to this day, tries to get municipal councils to approve a motion in which it is made explicit that they do not want kinetic energy projectiles to be used in that territory. It was, and is, an attempt to make visible the rejection

of police violence from the municipal level, and to generate a debate about it.

### **Documenting scientific evidence for change.**

We prepared a dossier with the means and knowledge we had about rubber bullets that could explain well what they are and how they function, with the aim of sending it to Human Rights groups and other collectives and associations to generate social debate about their use and to gather people to demand their prohibition. The same document was sent to some Catalan political parties with parliamentary representation.

In this report, we no longer spoke only of rubber bullets, but also referred to other equally dangerous projectiles (the so-called “foam”), which the Mossos d’Esquadra had acquired and used on some occasions. And we also broadened the focus: we no longer limited the responsibility to the police who fire these weapons, but denounced the complicity of the entire system. The disproportionate use of violence by the different police forces, the lack of visibility of the police identification number, which made it impossible to know who was responsible for each action, the lack of control and accountability mechanisms for police actions and, in short, the impunity enjoyed by the agents, both because of police corporatism (nobody ever sees anything, nor knows anything) and because of the complicity of the rest of the state bodies, that is, the judiciary and the political parties.

### **The road is long**

At that time, some of the comrades affected left the collective. I think that some of them were overwhelmed by the dimension of public denunciation that we were doing, participating in the media, and others simply got exhausted and could not or did not want to continue being part of the mass-media circus. Be that as it may, we didn’t have the capacity to keep them in the collective and they stopped coming to the meetings and gatherings. I think we have to learn to take care of the other comrades, those who are perhaps more vulnerable or tired, to give them the space in which they can feel comfortable, each one giving what she can. We didn’t know how to do that and it was a shame.

With the commotion that arose after Ester’s aggression, and the continuous images of the Brimo charging and beating anyone (girls, women, elderly people, etc.), people started showing signs of being fed up, and finally a commission was created in the Catalan Parliament to study the use of rubber bullets, although it was called the Commission for the Study of Security and Public Order Models and the Use of Anti-Riot Material in Mass Events, to which we sent our report and asked to appear in that Commission.

Yet, while the debates of this commission were taking place, another very serious incident occurred. Juan Andrés Benítez, founder of the Catalan Association of Companies for Gays and Lesbians, was brutally beaten for 12 minutes by Mossos d'Esquadra officers in a street in the Raval district of Barcelona. He died three hours later, at the Clinic Hospital. The images recorded by the neighbours left no room for doubt. The top politicians again tried to exonerate the officers (as they had done in the case of Ester), and accused the victim of having suffered a cardiac arrest due to drug use and of having started the fight with the 6 officers who killed him. Nobody believed them. Although this was not a case directly related to rubber bullets, it was of enormous importance in the Parliament's decision to ban the use of less lethal weapons by the Mossos d'Esquadra, while dismissing the dismissal of the aforementioned characters.

I want to dwell for a moment on this point. Obviously the ban on the use of rubber bullets was experienced as a victory. We had achieved the initial purpose for which we had been organising for so long, despite the fact that there were still foam bullets, which, although we knew less about them, we knew were equally dangerous and lethal, because of the news coming from France, where the Gendarmerie used them regularly. But, the fact that we knew that this victory was the result of an agreement between political parties to keep those politically responsible for the murder of Juan Andrés in their posts, made us realise that our demands were nothing more than a bargaining chip on the political chessboard. Those responsible for a murder were covered up in exchange of approving our demands for a ban on rubber bullets. And that, at least for me personally, hurt. Very much.

From then on, our work took a different direction. On the one hand, we wanted to redo the work we had done with rubber bullets, but now focused on foam projectiles, to also demand their prohibition. On the other hand, we tried to broaden our field of action. If up to that moment our objective was rubber bullets in Catalonia, now we would go for the banning of rubber bullets in the whole of Spain.

### **The Tarajal massacre**

At that time, another despicable event occurred. On 6 February 2014, 15 migrants who were part of a group of 200 people who were trying to enter Spanish territory from Morocco by swimming towards the Tarajal beach, in the city of Melilla, died when they were unable to reach the shore due to the rain of 145 rubber bullets and smoke canisters that 56 agents of the Guardia Civil shot at them from the shore. Although the judges have not judicially recognised the authorship and the case has remained in

complete impunity, for us they are part of the black computation of those killed by rubber bullets.

A year after the murder of Iñigo Cabacas, a large part of the collective went to Bilbao at the invitation of the Iñigo Gogoan (*Iñigo in memory*) Platform, who were in charge of publicising his case and demanding justice. Despite the circumstances, it was a wonderful trip. And it was because it allowed us to get to know each other better, to get to know each other as humans, and not just as comrades in struggle. To be able to exchange opinions about life, about our desires and wishes, our expectations, beyond police, weapons, pain and death. It was very important to create those bonds of friendship and respect that we have today. It also allowed us to meet others, like us, who were fighting for dignity and justice. I'm talking about the comrades, friends and people in solidarity who were fighting for Iñigo's memory in the Basque Country. And, of course, I am talking about Manu and Fina, Iñigo's parents, who, without knowing us, opened their arms to us and welcomed us and treated us like the son they had lost. The greatest love and respect for all of them, with whom from that day on, we were united by unbreakable bonds. Together we have made a good part of the journey. Every year, on the commemoration of Pitu's murder, as many of us as possible meet up in Bilbao to be with them and share their pain, and we have travelled to regional, state and European parliaments in the pursue of justice, reparation and non-repetition.

### **Searching for other logics**

Another of the positive points of this first visit was a colloquium organised under the name "Check the police model". This event defended the idea that the Basque police model had to change, as it was a model based and designed in a context of conflict against the ETA organisation. Yet, ETA had disappeared, and therefore, the conflict context was no longer present. Consequently, the police model also had to adapt to this new reality.

I think that thanks to that debate and the subsequent talks we had among ourselves and with other people, we strengthened our arguments. The problem was no longer just the police who were shooting, nor the protocols that existed (if there were any). The problem was (and unfortunately still is) the whole model: how officers are recruited, how they are trained, why they are taught that "the others" (i.e., us) are the enemy, etc. etc. etc. From that moment on, we were not only talking about rubber bullets, but we were criticising the police model as a whole, the police brutality taught in the academy, the excessive violence with which they act against anyone, against "their" enemy. As I say, our arguments were solidifying, becoming more compact, more organised.

### Indemnities as an instrument of division

With the banning of rubber bullets in Catalonia, the Parliament also approved the duty to compensate those affected, without this meaning that they had to withdraw the lawsuits that had been filed and that should continue their course. I have to say that my case did not fall into this category, as they only took responsibility for the actions in which the Mossos d'Esquadra had been the agents involved, and in my case, as I said, it was the National Police. They did it on a case-by-case basis, and that divided us. Because even though it wasn't necessary to withdraw the lawsuits, the state pressured them to do so. Some comrades were told that it was no longer necessary to continue with the judicial process, that they already had what they wanted, that this would only serve to delay everything a little more and make it more difficult. Without a common position, everyone did what they considered was best to do. Some got paid more, some got paid less and some didn't get paid at all. It also led to unrest between those who agreed to withdraw the demand and those who did not. We lost collective strength and this affected the mood of the group for some time. Between the "victory" over the ban and this confusing malaise, the association was losing members. A few survivors remained, along with some of the people who had been in solidarity with us from the beginning and were part of the association.

During the following years, we kept a low profile. We gave talks, participated in debates to which we were invited by anti-repressive collectives, issued communiqués expressing solidarity with others affected or denounced police actions in any part of the state. I don't think we ever stopped doing things and going to places, but we did reduce the intensity. Life, our lives, also had other variables (partners, children, family, friends, work,...) that we had to and wanted to take care of. Until October 2017.

### Catalan independence referendum

On 1 October 2017, a referendum was called in Catalonia to decide whether we wanted to remain part of the Spanish state or whether we wanted to become a new state within Europe. The repression unleashed that day by the state and its police forces had not been seen since the so-called "Spanish transition". Beatings, kickings to anyone, regardless of age, condition or gender. Police violence was democratised. And, of course, rubber bullets were fired. The ban on their use only affected the police under the Generalitat (Mossos d'Esquadra), but on that day, the Spanish state had mobilised its agents from the National Police and the Guardia Civil to prevent the voting from taking place nor-

mally. In this case, it was Roger Español who lost an eye due to the impact of the projectile. As always, we contacted his entourage to let him know that we were at his disposal for whatever he needed. It didn't take long for us to get to know each other, and since then he has been an active member of the association.

In the following years, from 2018 to 2020, different protests took place in Catalonia, more or less related to this process for independence, and to the imprisonment of the rapper Pablo Hasel for the lyrics of his songs, which were harshly repressed by the Mossos d'Esquadra. As a result of these actions, nine people suffered serious injuries, including loss of eyes, loss of a testicle or serious liver damage from the impact of foam projectiles. Once again, as we had already announced, it was not so much about the projectile, but about the police model, its structural violence and the impunity enjoyed by the agents.

In addition to denouncing these new cases, together with IRIDIA and NOVACT, two Human Rights and Nonviolent Action organisations respectively, we worked on the preparation of another report, this time much more exhaustive<sup>3</sup>, in which we tried to gather all the cases of which we were aware, as well as to approach the issue from a more legal perspective of defending human rights. Working on this report was hard work, and it shook me up again. Yes, anger again. Searching through newspaper articles and websites in search of other mutilated people who had not denounced, for whatever reason, did not leave me (and still does) indifferent. In fact, we are still searching. One of the objectives that we have set ourselves at "Stop Balas de Goma" is to make a list, a repository of all the people seriously injured by kinetic energy projectiles, as there is no official count on this subject.

As well as trying to gather this information, the report was also intended to encourage the same debate against the projectiles that had taken place in Catalonia, but at a national level. So we gave talks and presented our arguments in all the cities where we could organise events and denouncing talks. I must say that to our surprise, in many of these events we made contact with other people affected, many of them also blind, whom we did not know, but we were unable to organise these people around Stop Balas de Goma.

Nor were we able to achieve that in the reform of the law on Citizen Security, which was due to be debated in Congress at the end of 2022. It wasn't the right political moment and they did not listen: again that eling of being a bargaining chip for the political parties (for all of them) and again the anger.

3 "Stop Balas de Goma. Report on the use and impact of rubber bullets in Spain from a human rights perspective [2000-2020]". [https://novact.org/wp-content/uploads/2023/07/Final-Informe-Balas-de-Goma\\_compressed1.pdf](https://novact.org/wp-content/uploads/2023/07/Final-Informe-Balas-de-Goma_compressed1.pdf)

**Expanding international networks**

Throughout this life journey, we have tried to get in touch with other affected people's organisations that we knew existed in other parts of the world. The ultimate intention of the use of kinetic energy projectiles by the security forces is, in my opinion, to generate fear. Fear of going out to protest, to defend your rights and your dignity. Fear of the possibility of returning home maimed or even of not returning at all, which can make you desist from rebelling. That is why it is widely used all over the world. We knew that in Northern Ireland, the British police killed 17 people (9 of them children) with kinetic energy projectiles between 1973 and 1981, and thanks to a talk organised in the European Parliament we met one of the driving forces behind the banning of rubber bullets in England, where they are no longer used. We were also in contact on occasion with French comrades who had been mutilated during their Yellow Vests protests. But none of these contacts went any further. No network was woven.

But in the spring of 2023 and thanks to some comrades from the Maloka collective from Colombia living in Barcelona, we were able to establish contact with the people of *MOCAO*, the Movement in Resistance against the eye aggressions of the Mobile Anti-Riot Squad (ESMAD) in Colombia. And as a result of that first meeting, the idea of doing a campaign together was born. An international campaign that would make this global problem visible, trying to bring together more organisations. We contacted our colleagues from the *Coordinadora de Víctimas de Trauma Ocular* in Chile and our colleagues from the *Organización Social Etnias* in Ecuador. With these organisations we are preparing a first international meeting of survivors of police violence with eye trauma, which is planned for the summer of 2024.

The main idea of this meeting is to generate an international support network, to share experiences, both personal and organisational, and to put pressure on governments around the world on the need to stop the use of kinetic energy projectiles by law enforcement agencies and forces.

In this sense, one of the projects that we can recover is the one initiated by Amnesty International and Omega Research Foundation on the need for an International Torture-Free Trade Treaty that foresees a ban on the manufacture and trade of weapons and inherently abusive material, including kinetic impact projectiles.

So we are still there, seeking and finding new allies in the struggle for the prohibition of kinetic energy projectiles and in the denunciation of the police model, its violence and impunity. It has been 23 years of living with mutilation and turning it (as it could not be otherwise) into a space for political struggle and social demands. During these years, there have been moments of despair, discouragement and anger, but also many moments of feeling the solidarity, companionship and love of many people. Together, we have learned to overcome the blows and difficulties of fighting against police violence and to generate spaces of fraternisation and solidarity that strengthen the believe that, only united, organised and active, we can change the current police model based on violence and fear.

*Carles Guillot*

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## Aggravated solitary confinement in Turkey. A form of institutionalised torture.

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1 IACTA. Cooperative of Women Lawyers. Barcelona.

Last January 2023, 36 international jurists, journalists and politicians from 8 countries were part of the *International Delegation Against Isolation* that travelled to Turkey to hold meetings with civil society organisations and political circles regarding the prison situation<sup>1</sup>. The Delegation was divided into three groups travelling to different cities: Ankara, Amed and Istanbul. The three groups met on 28 January in Istanbul for an *International Forum against Isolation*.

The visit was followed by a report prepared by the Delegation: "Solitary Confinement and Isolation Policies in Turkey", released in March 2023. This text reflects some of the visit's conclusions and the subsequent monitoring of the current situation of prisons in Turkey concerning aggravated solitary confinement.

### General human rights context in Turkey.

Turkey is experiencing an alarming rollback of freedoms. Human rights defenders, journalists, members of the political opposition and especially Kurdish people continue to be subjected to unfounded investigations, prosecutions and arbitrary convictions. For years, the number of prisoners has exceeded the capacity of Turkish prisons with high levels of overcrowding. Anyone who opposes and dissents against the government is likely to be imprisoned. This repressive situation has to be seen parallel with a substantial economic crisis, where inflation reached 60 per cent in 2023.

According to data from the *Council of Europe Annual Penal Statistics 2022* (Aebi et al., 2023), in January this year, there were 303,945 people in prison in Turkey, exceeding the estimated prison capacity of 270,008 people, making it the country with the highest prisoner-to-population ratio in Europe (355/100,000 inhabitants). According to the report *Prison Global Trends* (Penal Reform International, 2022), Turkey built between July 2016 and March 2021 a total of 131 new prisons and planned to increase its prison capacity by 266,800 places by 2024.

A recent statement by the Human Rights Foundation of Turkey (TIHV), the Human Rights Association (IHD) and the Human Rights Section of the Turkish Medical Association (TTB) on World Day Against Torture 2023<sup>2</sup> estimated that at least 87 people had died in Turkish prisons in bizarre circumstances without proper investigation.

The position of President Erdogan's government towards the Kurdish people has hardened over the years. Between 2009 and 2014, a 'peace process' was opened to end an armed conflict that has claimed tens of thousands of lives over the past 40 years since the PKK (Kurdistan Workers' Party) guerrillas launched an armed struggle for independence for Turkey's approximately 20 million Kurdish people. Although the claim is now limited to more political and cultural rights, Erdogan's government continues to pursue a military solution, increasing attacks on PKK guerrilla bases in Iraq. It has also increased pressure on the leftist Kurdish HDP (Peoples' Democratic Party), imprisoning its leaders and carrying out various legal manoeuvres to outlaw it. Thus, in January 2023, before the last elections, the party's accounts were blocked as a precautionary measure by the Constitutional Court, alleging links with the PKK and thus hindering the election campaign and preventing it from receiving the aid provided for by Turkish law<sup>3</sup>, which led to international protests, including from Amnesty International<sup>4</sup>, which considered that the closure of the HDP party would violate the right to freedom of expression and association.

On the night of 15-16 July 2016, there was an allegedly thwarted armed mobilisation by some factions of the Turkish Armed Forces aimed at overthrowing President Erdogan. The mobilisations took place mainly in Ankara and Istanbul. The Turkish government stated from the beginning that the cleric Fethullah Gülen, leader of the Hizmet Movement, an Islamic

1 See information and report <https://anfenglish.com/human-rights/international-delegation-against-isolation-presents-new-report-66286>

2 [https://ihd.org.tr/en/wp-content/uploads/2023/06/sr2023June\\_IHD-HRFT-TMA.pdf](https://ihd.org.tr/en/wp-content/uploads/2023/06/sr2023June_IHD-HRFT-TMA.pdf)

3 <https://hdp.org.tr/en/turkey-s-constitutional-court-suspends-payment-of-treasury-funds-to-the-hdp/17044/>

4 <https://www.amnesty.org/en/wp-content/uploads/2023/04/EUR4466632023ENGLISH.pdf>

*Photograph of the macro-prison built in 2020 in Adana province.*



movement with significant political, social and religious influence in the country, was responsible for this situation. From exile, the cleric accused the president of having carried out a fake self-coup operation that allowed him to increase the persecution against the followers of the Hizmet movement. Gülen has been living in the United States since the 1990s. In the following days, 7,453 people deemed “coup supporters” were arrested, 7,000 police officers were suspended from their posts, and 2,700 judges and prosecutors were dismissed, representing almost a fifth of the judiciary. In addition, 450 members of the courts at different levels were arrested and taken to prison<sup>5</sup>. Since then, the purge has continued, and in 2018, the UN Office of the High Commissioner for Human Rights reported that 4,240 judges and prosecutors had been arrested and removed from office<sup>6</sup>.

The State of Emergency was “lifted” in 2018. However, the measures taken between 2016 and 2018 aimed at purging

the Administration and the Security Forces, banning protests and strikes, and the detention of thousands of people were extended through the adoption of Law n° 3713, the new “Anti-Terrorism Law”. This law was passed without parliamentary control and introduced a range of approved measures, such as extending police detention for up to 12 days, extending the grounds for banning demonstrations and protests, authorising governors to limit entry and exit from cities, prohibiting public events, and declaring extraordinary security measures.

There are two sectors in which the maintenance of the state of exception has been visible. One is the rights of so-called minorities, not only LGTBIQ+, migrants, and religious dissidents, but also directly against the feminist movement. On the other hand, concerning workplace practices, with the formal and *de facto* ban on strikes and unionisation, thousands of trade unionists were imprisoned.

During these years of increasing repression, the Parliament has introduced reforms to existing laws that have further restricted freedom of expression on the internet; Pride marches have been banned in several provinces, with hundreds of arrests during demonstrations. Turkey remains outside the Istanbul Convention, with the consequences for women’s rights, particularly concerning the fight against gender-based violence.

5 <https://www.amnesty.org/en/latest/press-release/2016/07/turkey-human-rights-in-grave-danger-following-coup-attempt-and-subsequent-crackdown/>

6 OUNHCR (2018) Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East. New York. <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=12971>



Certain professions are particularly targeted by state repression. The Special Rapporteur on the Independence of Judges, Diego García Sayán, published a report<sup>7</sup> in which he notes that in Turkey, the Public Prosecutor's Office systematically investigates and brings charges against lawyers under the Anti-Terrorism Law by associating lawyers with the alleged crimes of their clients. Between 2016 and 2022, more than 1,600 lawyers have been prosecuted, and 615 have been placed in pre-trial detention under the Anti-Terrorism Law. A total of 474 lawyers have been sentenced for crimes of membership of a "terrorist organisation" (art. 314 of the Criminal Code). The Bar Association of Diyarbakir (Kurdistan area of Turkey) has seen 68 of its members prosecuted in recent years. The former presidents of the Bar Association, Fethi Gümüs and Mehmet Emin Aktar, were sentenced to seven years and six months and six years and three months in prison under the same law.

Following a press release in 2020 by the Ankara Bar Association in which anti-LGBTBIQ comments by the Director General of Religious Affairs were considered hate crimes, Erdogan changed the electoral system of the bar chambers through Law 7249 to dilute the power of the most critical sector<sup>8</sup>.

The same has been confirmed for journalists. Since 2012, Turkey has been considered one of the world's biggest prisons for journalists, according to the *Committee to Protect Journalists*. In 2020, it ranked 165 out of 180 in the press freedom ranking compiled by Reporters Without Borders. The government has arrested hundreds of journalists, closed dozens of media outlets, and persecuted various communicators<sup>9</sup>. Reporters Without Borders already warned in its 2022 Report that 90% of the national media are in the hands of the government, something that could be seen in the last elections in 2023. The vote count varied when the figures were consulted in national and independent media.

Many health professionals are also imprisoned for giving their opinion or providing medical care to alleged members of Turkish armed groups. Dr. Sebnem Korur Financi, president of the Turkish Doctors' Association (TTB), was arrested in the early hours of 26 October 2022. The reason for her arrest was her statements on television calling for an independent investigation into allegations of the alleged use of chemical weapons by the Turkish armed forces in the Kurdistan region of Iraq. Financi is a leading forensic doctor in international torture research and

a well-known human rights activist. She was sentenced to two years and eight months for "terrorist propaganda". Numerous international organisations called for her release<sup>10</sup>, which finally took place in January 2023 by a court in Istanbul.

The extension of such widespread repression against such diverse sectors can only be understood (in a case where there is no civil war) in a context of generalised and widespread repression, assumed as natural or inevitable by society. This is usually done based on the identification of another as the culprit of this repression and with the need for this repression to be maintained to avoid the supposed danger caused by the sectors of society accused of being separatist.

### **Aggravated solitary confinement as a form of torture: the situation of Abdullah Öcalan and other Kurdish prisoners and their imprisonment in Imrali prison.**

PKK leader Abdullah Öcalan was arrested in 1999 in Kenya and first sentenced to death that same year. Then, in 2002, his sentence was commuted to life imprisonment when capital punishment was abolished in Turkey.

Since then, he has been held in solitary confinement on the island of Imrali. Öcalan has been deprived of his liberty for more than 24 years in conditions of *aggravated solitary confinement*<sup>11</sup>.

The prison on the Sea of Marmara was emptied to house him as the only prisoner. It was only in 2015 that three other Kurdish prisoners were transferred: Hamili Yıldırım, Ömer Hayri Konar, and Veysi Aktaş. They have been in total isolation for years, with no contact with their lawyers or families.

Öcalan is held in solitary confinement in his cell for 23 hours a day. The European Court of Human Rights has ruled that there was a violation of Article 3 about his situation of aggravated and indefinite solitary confinement on Imrali Island and the impossibility of appealing his verdict<sup>12</sup>.

Throughout his stay in this prison, according to his legal team, Öcalan's and other prisoners' visiting rights have been systematically violated. From 2014 to 2023, Öcalan has only been allowed five visits from his family. The last person to see him was his brother on 3 March 2020. In 24 years, he has been able to communicate with the outside world via telephone only twice: on 27 April 2020 and 25 March 2021. During the last call, the connection was lost after 2 minutes of connection and

7 A/HRC/50/36: Protection of lawyers against undue interference in the free and independent exercise of the legal profession - Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán | OHCHR

8 Ibid A/HRC/50/36

9 <https://cpj.org/europe/turkey/>

10 <https://www.amnesty.org/en/documents/eur44/6317/2022/en/>

11 [https://www.freeocalan.org/assets/downloads/english/forms/2022\\_Assessment\\_Report.pdf](https://www.freeocalan.org/assets/downloads/english/forms/2022_Assessment_Report.pdf)

12 Case of ÖCALAN V. TURKEY. Application 46221/99. [https://www.hr-dp.org/files/2013/09/09/CASE\\_OF\\_OCALAN\\_v\\_TURKEY\\_.pdf](https://www.hr-dp.org/files/2013/09/09/CASE_OF_OCALAN_v_TURKEY_.pdf)

*Photograph of Imrali Prison.*

could not be re-established. This is the last time he has been in contact with him. In turn, Öcalan last saw his lawyers on 7 August 2019. The other three prisoners have also been unable to see their lawyers since they arrived in prison in 2015. In 2022, the family made 49 requests to the authorities to visit Öcalan, which were unanswered.<sup>13</sup>

These restrictions on fundamental rights are always based on applying administrative sanctions for “behavioural problems”, which are renewed every six months. These decisions rarely reach the lawyers’ team so that they can appeal due to the total lack of communication<sup>14</sup>. In addition, the lawyers have lodged appeals in practically all judicial instances, including the Constitutional Court and the Public Prosecutor’s Office. They have also made countless requests to European bodies to visit the Imrali prison and to pronounce themselves on this situation. The European Committee for the Prevention of Torture (CPT) visited Imrali prison in September 2022. Its report has not yet been published, and no details of the visit have been disclosed despite numerous appeals by the family to know the state of health and detention conditions in which Mr Öcalan is being held.

The treatment of the Kurdish leader mirrors the treatment of society. The justification for this type of imprisonment based on the alleged dangerousness of politically dissident sectors adds to the exceptional measures applied to the community. Concerning prison policy, it is important to note two additional elements: aggravated life imprisonment and the expansion of so-called F-type prisons.

#### **Aggravated life imprisonment**

In 2002, Turkish Law No. 4771 abolished the death penalty except during times of war or threat of war. In 2004, Turkey declared the total abolishment of capital punishment in the constitution. Meanwhile, death penalty sentences were replaced with aggravated life imprisonment sentences. For the first time, the law specified a prison sentence with no hope of release in terms of those convicted on charges of “terrorism”. So, it means more severe punishment for those tried for political reasons.

Life imprisonment has always been a feature of Turkish law. The last person to be executed by the death penalty was Hidir Aslan on 25 October 2005. Recently, Erdogan has publicly taken a position in favour of reintroducing the death penalty<sup>15</sup>.

<sup>13</sup> Ibid ref 10

<sup>14</sup> Ibid 10

<sup>15</sup> World Coalition Against Death Penalty. Turkey : The risk of reinstatement of the death penalty <https://worldcoalition.org/>

For those sentenced to life imprisonment, there is the possibility of parole. Persons considered political prisoners must serve  $\frac{3}{4}$  of their sentence before they have the option of parole.

In contrast, persons not considered political prisoners are eligible for parole after serving two-thirds of their sentence. This means non-political prisoners would be suitable for parole after serving 24 years of imprisonment. In case of disciplinary sanctions, this time can be increased up to 30 years. On the other hand, political prisoners will serve at least 30 years and, in the case of sanctions, 36 years. However, this possibility is eliminated in aggravated life imprisonment, and the person must remain imprisoned until death and under strict security measures.

In Aggravated Life Imprisonment (A.L.I.) system, the person is sentenced to a regime that further restricts the convict's ability to exercise their rights and freedoms and deepens the isolation of the convict. The principles of this strict security regime are laid out in Article 25 of the Execution Law. A rigorous rule is applied in employment, communication, and physical activities.

Related to the prison conditions and problems of aggravated life prisoners<sup>16</sup>, the main difference is the execution regime imposed. According to law No. 5275, article 25 an aggravated life prisoner's rights are one hour of fresh air, visitation and phone right every 15 days. The law stipulates solitary imprisonment in a "single" room. Prisoners' connection with other prisoners is minimal. Usually, prisoners can have visits weekly of up to 3<sup>rd</sup>-degree family members and three friends they can list. An aggravated life prisoner can be visited only by relatives up to 2<sup>nd</sup> degree, including parents, grandparents, husband or wife...but they are not allowed to be visited by friends. The possibility of not being married before or being divorced can aggravate the isolation. Furthermore, gay or lesbian couples do not have the right to a visit in their entire life. By law, prisoners sentenced to aggravated life imprisonment are supposed to be housed in a "room" built for one person, but the truth is that they spend 30 years to all of their lives in cells that are made for disciplinary punishment. According to the letters sent to the Turkish Civil Society in the Penal System Association (CISST) from prisoners, the available space is one to two square meters when there is a bed or basic furniture, making it impossible to walk around. There is no direct sunshine or air stream, no place to dry clothes, and the toilet in the cell is beside the place to cook. Through the lack of movement, there is a quick health deterioration: rheumatism and arthritis are increased, among other sedentarism pathologies. Loneliness and almost total iso-

lation have severe effects on mental health, including memory loss, difficulty in speaking and communicating, loss of senses, insomnia, and schizophrenia.

There are enormous difficulties in accessing statistical information about aggravated life imprisonment prisoners. In the "Communication from NGOs (26/07/2021) in the *Gurban group v. Turkey* (Application No. 4947/04) to the Committee of Ministers of the Council of Europe",<sup>17</sup> the Association of Lawyers for Freedom and Human Rights Foundation of Turkey mentioned that until 2014, there were 1.453 people sentenced to A.L.I. in the Republic of Turkey. They have submitted several applications to the Ministry of Justice General Directorate of Prisons and Detention Houses. They have repeatedly asked the Ministry how many convicts are serving a sentence of aggravated life imprisonment in Turkey, how many of them were unable to benefit from conditional release, and how many had been serving their sentence for more than 25 years without answer. Also, CISST has formulated similar questions to the Ministry without any response since 2014. The estimated figures come from the Public Prosecutor's Office, that, only in 2019, proposed an aggravated life imprisonment sentence in 1.462 cases, and Turkish courts rendered a verdict on A.L.I. in almost the double of cases: 2.926 people.

Persons sentenced to A.L.I. are denied any right to hope because they are not eligible for parole, which is a form of psychological torture in itself. This is to be added to the extreme conditions of solitary confinement. The ECtHR has condemned Turkey several times for this<sup>18</sup>, which has not led to changes.

### Type F and S Prisons

Prisons in Turkey can be classified into open and closed prisons. Within the latter are three levels: high, standard and low security.

Type F Prisons correspond to high-security prisons and usually house persons accused/convicted of terrorist offences as political prisoners. In the late 1990s, Turkey started to build prisons based on the American cellular system to increase the isolation of prisoners.

Type F prisons have a standard structure of three main corridors, four prisoner modules and one administrative module. They have 57 cells for 1 or 2 persons and 108 for three. The cells are smaller than in other prisons. All the space in the prison is monitored by cameras 24 hours a day, except for the cells. In the centre, there is a control area from which everything is

wp-content/uploads/2021/08/doc-2page\_turquie\_EN\_V3.pdf

16 CISST "Addressing Prisoners with Special Needs: Life Imprisonment" <https://cisst.org.tr/reports/addressing-prisoners-with-special-needs-life-imprisonment/>

17 [https://hudoc.exec.coe.int/#%22execidentifier%22:%5B%22DH-DD\(2021\)766E%22%5D](https://hudoc.exec.coe.int/#%22execidentifier%22:%5B%22DH-DD(2021)766E%22%5D)

18 *Öcalan v. Turkey*; *Gurbert v. Turkey*; *Kaytan v. Turkey*

*Entrance to the F-type prison in Adana.*

monitored. Human rights organisations have severely criticised this type of prison because of the extreme isolation imposed on the prisoners. Also, the appalling unsanitary conditions are detrimental to the prisoners' health since the same small space is used for bathing, showering, rubbish collection, eating and sleeping.

Since 2021, Type-S prisons have been increasingly opened. These are also maximum security prisons with an even more restrictive system than F-type prisons and are intended to replace them. More than one-third of the people in these prisons are political prisoners. Compared to F-type prisons, Type-S prisons have a majority of single cells; there are cameras even inside the cells, including images of the space for toilets and showers inside the cell. Prisoners are not allowed to engage in activities, there is no access to outside information (press, radio), and the system of visits is extremely restricted.

With the increase in the construction of Type-S prisons, it can be asserted that the policy of solitary confinement continues to grow and harden, evolving into forms that are, following the Nelson Mandela Rules and the recommendations of the

Rapporteur against Torture, intrinsically conditions of institutional torture.

The Delegation concluded, after their visits and interviews, that practices at Imrali Prison have transcended the definition of isolation and have reached the point of *absolute incommunicado confinement*.

The situation makes it imperative to define this aggravated solitary confinement as a specific type of inhuman detention, not only as a health and legal but also as a political problem.

#### References

- Aebi, M. F., Cocco, E., & Molnar, L. (2023). *Prison Populations* (Issue December 2022). [https://wp.unil.ch/space/files/2023/06/230626\\_SPACE-I\\_2022\\_FinalReport.pdf](https://wp.unil.ch/space/files/2023/06/230626_SPACE-I_2022_FinalReport.pdf)
- Penal Reform International (2022). *Global Prison Trends 2022*. [https://cdn.penalreform.org/wp-content/uploads/2022/05/GPT2022.pdf?mc\\_cid=636b5bec02&mc\\_eid=12936458d1](https://cdn.penalreform.org/wp-content/uploads/2022/05/GPT2022.pdf?mc_cid=636b5bec02&mc_eid=12936458d1)

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## New project sheds light on the worldwide use of solitary confinement

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The ‘Mapping Solitary Confinement’ project, launched in early 2024 by Dr Sharon Shalev and collaborators, aims to shed light on the global use of solitary confinement - also known as ‘isolation’ or ‘segregation’.

The project, a collaborative effort involving contributors from all over the world, is structured around relevant human rights standards, in particular the UN Special Rapporteur on Torture’s recommendations and the United Nations Standard Minimum Rules for the Treatment of Prisoners also known as the ‘Mandela Rules’ (UN, 2011; UN General Assembly, 2015). These standards state that solitary confinement should only be used as a last resort, for a short a time as possible and for no longer than 15 days in total. Despite being a ‘soft law’ instrument which is not legally binding, the Mandela Rules provide a strong ethical and normative framework for evaluating the use of solitary confinement and a standard against which practices can be measured (Shalev, 2024).

The project includes comprehensive reports on national practices from 57 jurisdictions within 42 countries across six continents, compiled by a wide network of volunteers all over the world. The project, available online on a dedicated website, is still in progress, encompassing only a representation of the countries in the world. It is therefore crucial for the project to receive extensive support, including submissions of new country reports, as well as maintaining and updating data.

The project also includes an overview and key findings report, completed with support from the Association for the Prevention of Torture (APT). The report highlights a widespread and persistent use of solitary confinement, as none of the countries covered by the project appears to manage its prison system without resorting to the use of solitary confinement in some form. The report also demonstrates that solitary confinement is widely used as disciplinary punishment for offences committed in prison. These offences could range from minor disciplinary issues, such as speaking disrespectfully to staff to physical violence against another person. Other grounds for imposing

solitary confinement included, in the majority of countries surveyed, allegedly protecting individuals from self-harm or harm by others, and managing prisoners labelled as ‘high risk’ (Shalev, 2024). Other areas covered by the project include conditions in solitary confinement units, its duration, safeguards, and the role of health staff in solitary confinement units.

This project holds special relevance for the Torture Journal, given its longstanding focus on solitary confinement. Accordingly, we will highlight notable quotes from papers featured in previous issues of the journal:

“although there is a long way to go before the use of solitary confinement will end, the recommendations contained in the International Guiding Statement are a valuable, fundamental, and pragmatic tool to centralise the issue of prison isolation in the debate on the rights of incarcerated individuals, and to achieve its end” (Stroppa & Moss, 2023).

“Solitary confinement deprives your senses, but most than anything banns colors. Because of blindfolds and because of the monotonous tones of what surrounds you. Colors are at the heart of emotions and feelings. Quoting Koestler: “When this morning, for the first time I looked out of the window and saw a green field landscape filled with flowers and trees, it was all a dream. The main issue is that the trees and flowers have color. Only after that, you notice the monotony of black and white and its impact” (Koestler, 2006 pp 238-9). When asked about their mental state, most prisoners (11/16) said that they suffered some kind of severe emotional breakdown, labelled in their own words as depression, anxiety or permanent irritability.” (Khodaei, 2017).

The project advocates for increased scrutiny and awareness of the harms of this prison practice, reserving it as last resort in emergency situations, and a complete ban on its use with people who are mentally unwell and other people in a position of vulnerability. The initiative serves as a call to action, urging all stakeholders to advocate for alternatives that do not compromise the health and wellbeing of people deprived of their liberty. We therefore encourage Torture Journal readers to provide support to this important initiative.

For more information on the ‘Mapping Solitary Confinement’ project please visit its website using the following link: <https://www.solitaryconfinement.org/mapping-solitary-confinement>. We strongly encourage readers to contact the editor of the web-site to support this important initiative by contributing country data or reports ([Sharon.Shalev@solitaryconfinement.org](mailto:Sharon.Shalev@solitaryconfinement.org)).

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*References*

- Khodaei, S. M. (2017). Solitary confinement, Section 350, Evin prison in Tehran. *Torture Journal*, 27(2). Online: <https://doi.org/10.7146/torture.v27i2.97221>
- Shalev, S. (2024). *Mapping Solitary Confinement: A Key Findings Report*. Online: <https://www.solitaryconfinement.org/mapping-solitary-confinement-findings-report>
- Stroppa, R., & Moss, D. (2023). Introducing the International Guiding Statement on alternatives to solitary confinement. *Torture Journal*, 33(3), 113–119. Online: <https://doi.org/10.7146/torture.v33i3.141379>
- UN. (2011). UN Special Rapporteur on torture calls for the prohibition of solitary confinement. Online: <https://www.ohchr.org/en/press-releases/2011/10/un-special-rapporteur-torture-calls-prohibition-solitary-confinement#:~:text=The%20Special%20Rapporteur%20also%20called,and%20persons%20with%20mental%20disabilities.>
- UN General Assembly. (2015). United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). A/RES/70/175. Online: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/NelsonMandelaRules.pdf>

# Degradation as salvation: Reflections on El Salvador's punitive prison model

Lutz Oette<sup>1</sup>

## Introduction

The pictures of shaven men with naked upper bodies, sitting in rows back-to-back with fellow prisoners in close proximity, surrounded by heavily armed guards, encapsulates the essence of El Salvador's ongoing "war on gangs". This "war" is facilitated by a state of exception (emergency) declared on 27 March 2022 (Asamblea Legislativa, Régimen de excepción, 2022; Asamblea Legislativa, Decree No 333, 2022; Office of the High Commissioner for Human Rights, 2023) which itself followed years of repressive security policies and practices (Amnesty International, 2023). It is based on a well-known template of strengthening executive powers; it does so by expanding criminalisation and detention powers, and by reducing safeguards, including effective remedies, against violations and independent judicial oversight of the state's compliance with its human rights obligations (Timmerman, 2023). What stands out, though, is its widely publicised use of punitive mega prisons having the capacity to hold 40,000 prisoners as its flagship project (Al Jazeera, 2023). These prisons serve as highly visible places in which the state displays the exercise of its power to establish a new order. In this order, which forms part of the wider "*populist challenge to human rights*" (Alston, 2017), respect for democracy and the rule of law is exchanged for an all-powerful, autocratic state that guarantees peace and security (see on the underlying ideology, Rocker, 2023). The model, implemented against a backdrop of long-standing and increasing violence by gangs and organised crime (Paúl, 2024), in El Salvador and across the continent, has proved highly popular (Rosen, Cutrona, & Lindquist, 2023). El Salvador's President Bukele was re-elected with an 80%+ majority (Renteria & Kinoshian, 2024) and Ecuador, Honduras and other states are seeking to replicate El Salvador's prison model (Centenera, 2024; Guillén, 2023; International Crisis Group, 2022; Timmerman, 2024; Volpi, 2024;). In a human rights meeting in Peru that I attended in late 2023, one participant spoke out movingly against the discrimination experienced by a young gay man but wholeheartedly approved of

El Salvador's approach to treating suspected gang members in prison. It is not difficult to see why. Plagued by insecurity, violence and fear of crime, El Salvador's model promises a solution that reestablishes a strong state and order, built on the ideal of an almighty, harsh but well-meaning father figure, embodied by President Bukele. This approach, unsurprisingly, has met with approval and admiration amongst right-wing populist actors in the Americas (Beauchamp, 2023). Its appeal is apparent. It enables the state to impose a disciplinarian, binary order along simplistic lines of good (state, security forces, acting on behalf of upright citizens) and bad (gangs, crime) (La40, 2024). Such narrative not only glosses over the widespread human rights violations inherent in and associated with this approach (Timmerman, 2023). It also distracts from the root causes and responsibility of official and elite actors for the state of affairs in the region, stemming from economic policies and engrained discrimination resulting in high levels of inequality and poverty, the war on drugs, securitisation, state-organised crime collusion, corruption, transnational developments and other factors contributing to the prevalence of violence (Rosen, 2021; Sánchez-Ancochea, 2021; Timmerman, 2023; United Nations Development Programme, 2021).

The wider appeal of the mega prisons as a highly symbolic space can also be attributed to the religious connotations it carries: The (alleged) gang members are sinners; they have turned societies into hell on earth; therefore, they must undergo visible punishment. Their pain, suffering and degradation equates with salvation. Salvation for the population blighted by their violence, and salvation for the nation which lost its control (and, from a traditional male perspective, 'honour' and 'dignity'). There is no salvation for the gang members who are portrayed as dangerous and beyond redemption. The Justice and Public Security Minister reportedly expressed this point in stark terms: "*We are eliminating this cancer from society*" and "*Know that you will never walk out of CECOT [Centre for the Confinement of Terrorism], you will pay for what you are ... cowardly terrorists*" (Al Jazeera, 2023). The objective of rehabilitation, which should be central to imprisonment from an international human rights perspective (article 5(6) American Convention on Human Rights; article 10(3) International Covenant on Civil and Political Rights) does not come into the equation. The United Nations Committee against Torture (CAT/C/SLV/CO/3, 2022, para 22), noted rather laconically in its observations on prison conditions in El Salvador that "*[t]he absence of social reintegration policies is another cause for concern.*"

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### **El Salvador's punitive prison model and its compatibility with international human rights standards**

El Salvador's 'war on gangs' and associated detention practices have raised a series of human rights concerns. Reports by human rights bodies and non-governmental organisations (NGOs) provide evidence of large-scale arbitrary arrests, with increasing indications that many of those who are arrested and detained are not actually gang members (Timmerman, 2023), enforced disappearance, torture and other ill-treatment, and extrajudicial killings facilitated by a lack of adequate custodial safeguards and judicial protection (Agrupación Ciudadana por la Despenalización del Aborto et al., 2022; Amnesty International, 2023; Human Rights Watch & Cristosal, 2022; Inter-American Commission on Human Rights, 2021; Inter-American Commission on Human Rights, 2022). El Salvador now has the highest per capita incarceration rate worldwide, which is also due to the automatic recourse to potentially indefinite pre-trial detention for gang-related crimes (Agrupación Ciudadana por la Despenalización del Aborto et al., 2022; Amnesty International, 2023). In general terms, the Inter-American Commission on Human Rights highlighted the "*deplorable detention conditions faced by persons deprived of liberty in El Salvador, which worsened under the state of exception*" (Inter-American Commission on Human Rights, 2022, para. 71). The conditions in prisons such as CECOT are characterised by overcrowding (BBC Mundo, 2023; the space for each person in newly built prisons is 0.58sqm of space, which is around 1/7 of internationally recommended minimum standards), and lack of adequate nutrition (Morbiato, 2023; the food consists of meagre portions of beans and rice that prisoners have to eat with their hands, detainees who have been released recounted that they were "*constantly hungry*"; (Serrano, 2024). Sanitation and health care are inadequate (on prisoners contracting diseases, see Morbiato, 2023) and adequate facilities are lacking (there are no recreational facilities; prisoners spent their time in overcrowded, bare metal cages and with drills, such as roll calls, but with no access to daylight, Morbiato, 2023). These conditions are complemented by humiliating practices (for example, prisoners have their heads shaved every five days, Morbiato, 2023). Singly and in combination, they are not designed to, and clearly do not meet requisite standards. Consequently, they constitute, certainly cumulatively, cruel, inhuman and degrading treatment if not torture (Amnesty International, 2023; United Nations Committee against Torture, 2022). This legal analysis is undoubtedly important. It forms part of an increasing, concerted scrutiny by NGOs and human rights bodies on the nature and extent of human rights violations, which may also give rise to international criminal accountability for crimes against humanity under the ICC Rome Statute to which

El Salvador is a party. However, it risks missing the intensely dehumanising essence of El Salvador's prison model if it does not equally explore it as a deliberate, and deliberately human rights violating, strategy.

### **The punitive prison model as a torture regime**

The strategy of incarcerating suspected gang members in conditions that do not meet basic needs and minimum standards, and are designed to humiliate them, deliberately inflicts pain, suffering and degradation on them, and consequently their families and others impacted. It sets a precedent that popularises torture and other ill-treatment as a spectacle which implicitly or openly celebrates the counter-violent enactment of state power. This prison model bears the hallmarks of torture. It intentionally creates conditions that, cumulatively, result in severe pain or suffering, both physically, including lack of adequate medical care and undernourishment and its effects (Morbiato, 2023; United Nations Committee against Torture, 2022), and psychologically. It attacks the core of prisoner's self-determination, personal control and autonomy, and thereby their dignity. The very architecture of prisons such as CECOT in Tecoluca - high, reinforced concrete walls, metal cages as cells, under constant, high-tech surveillance, and military style guards - communicates coercive state domination designed to intimidate and subordinate their inmates (BBC Mundo, 2023). Prisoners are subjected to a highly regimented, disciplinary regime that deprives them of any sense of individuality and humanity, which are underpinned by conditions of harshness by design, including sensory manipulation, such as exposure to constant bright light (Quesada, 2024). This regime is aimed at annihilating any hope that prisoners may have of freedom or a decent life, which are instead replaced with the prospect of a slow, debilitating and deeply depressing rotting away (on the right to hope, see Judge Power-Forde, 2013). Miguel Sarre, a former member of the United Nations Subcommittee for the Prevention of Torture, reportedly referred to CECOT as a "*concrete and steel pit where there is a perverse calculation to dispose of people without formally applying the death penalty*" (BBC Mundo, 2023). Its multiplicity of stressors creates a torturing environment, namely "*a milieu that is made up of contextual elements, conditions and practices that obliterate the will and control of the victim, compromising the self*" (Pérez-Sales, 2017, p. 284; see also SRT, 2020). The objective of this environment is to break the gangs by breaking the gang members, and establish the monopoly of state violence, over the gangs and society at large. Translated into the legal terms of the purpose element (Zach, 2019), its main purpose is to punish those suspected of or being convicted for being gang members (and associated crimes). It also seeks to intimidate third persons,



that is other (potential) gang members outside prison, by communicating to them what fate awaits them. To the extent that it is motivated by targeting persons belonging to economically marginalised groups, as emerging evidence suggests (Amnesty International, 2023; further, Rucker, 2023), it also fulfils the purpose element of discrimination (Oette, 2024). The prisoners are under the total control of the state authorities, and thereby rendered powerless, that is unable to resist, and helpless, in terms of being exposed to complete arbitrariness (SRT, 2005).

The model encapsulates several features which can be viewed as defining characteristics of torture, conceptualised as a deliberate attack on, and “*radical denial of human dignity*” (Mavronicola, 2021, p. 46), intense degradation and “*symbolic exclusion from the human community*” (Webster, 2018, pp. 129–130). This treatment, which in El Salvador begins with the arbitrary modalities of arrest, detention and lack of due process in routine, online, mass-administered proceedings (Agrupación Ciudadana por la Despenalización del Aborto et al., 2022; Amnesty International, 2023; Human Rights Watch & Cristosal, 2022; Inter-American Commission on Human Rights, 2022; United Nations Committee against Torture, 2022), and the portrayal of its targets fulfils several “*species of serious degradation*” identified by Jeremy Waldron based on Margalit’s work (Waldron, 2010, p. 310). First, bestialisation and demonisation. Prisoners are treated as de-individualised embodiments and representatives of an inherently dangerous prototype of a criminal-cum-enemy who threatens peaceful community life and the nation. They are therefore treated as “*sub-human*” (Corman, 2022, p. 279), having forfeited their own humanity and respect for their rights on account of their (suspected) violent conduct if not disposition. Secondly, instrumentalisation (Waldron, 2010). Subjecting prisoners to a regime designed to punish and humiliate them, they are treated as a mere means in pursuit of a policy aimed at (re)establishing state power over gangs. Their suffering and degradation serve as a highly visible message that the state is “everything” and gang members are “nothing”. The nature of their humiliation, such as shaving, half-naked lining up under armed guard, insufficient food rations, and lack of exercise also has a gendered dimension. In seeking to destroy the gang’s violent macho culture, the prisons impose a counter-macho regime that seeks to emasculate its targets. Combined, the model results in a grim spectacle of communicating state power, law and order through seeking to break the prisoner’s personality.

### **A new template combining extraordinary measures and extreme punitivism?**

The implications of this model are disconcerting, posing a visible threat to the prohibition of torture. It makes no attempt to discharge the state’s positive obligation to protect the right of its population to be free from violence in a manner compatible with international human rights standards. Consequently, it openly disregards the state’s obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and other pertinent regional and international human rights treaties. It also boldly asserts its right, if not duty to deploy drastic measures, including systematic ill-treatment that may amount to torture, if required to establish safety and “peace”. Its underlying message is that it is legitimate to solve organised criminal violence through organised state violence. Embedded in a legal regime of emergency and a discourse of exceptionalism, it has all the hallmarks of Agamben’s state of exception (Agamben, 2005), whereby the reduction of prisoners to their bare humanity functions as a societal “cleansing” ritual. Its populist appeal and “pornographic” media exposure (Quesada, 2024; Ventas, 2024) which resembles visits to colonial-style exhibitions of ‘savages’ and evokes their portrayal to justify “civilised” torture (Brundage, 2020) mask what is a highly retrograde mode of doing politics. It is based on prioritising safety and security whose realisation is traded against respect for human rights and a participatory, redistributive democracy (La 40, 2023). While it addresses a genuine concern over public safety, it does so without addressing the multiple, deep-seated structural causes of violence and factors explaining its more recent explosion (La 40, 2023).

The enactment of a visible torture regime, and its cheering on by certain quarters, therefore forms part of a more fundamental policy failure, or success in the eyes of its architects, that leaves much of the status quo in place while giving licence to authoritarian policies and methods. Its punitive prison model risks setting a new template. It differs from prisons such as Guantánamo Bay, the emblematic centrepiece in the “war on terror”. The latter forms part of an extraordinary regime, which has punitive and deterrent features. However, its (potentially indefinite) detention and harsh conditions were justified primarily with reference to the risk posed by the terrorism suspects detained therein (Inter-American Commission on Human Rights, 2015). The prison facility was based on secrecy, creating what has been termed a (legal) black hole (Steyn, 2004), although much of what happened inside became public knowledge eventually. This feature, together with its extraterritorial location and limited number of detainees, contrasts with

an in-country prison that holds large numbers of detainees and is proudly displayed to a wider, effectively worldwide audience.

Facilities such as CECOT turn incarceration as harsh punishment into an integral part of a highly visible strategy that contains risk through both confinement and deterrence. It therefore combines extraordinary measures that, with some variation, are a common feature in securitised contexts with extreme punitivism. Time will tell whether it will serve as a model that gains wider traction or falls apart on account of its extremity, perverse rationale and number of its victims engendering resistance. What is clear is that the model runs counter and is deeply antithetical to international moves towards improved prison conditions if not decarceration (Montford and Chloë Taylor, 2022; United Nations, 2021). From an anti-torture perspective, it is therefore of utmost importance to resist resolutely its dehumanising logic and institutionalisation of cruelty.

### References

- Agamben, G. (2005) *State of Exception*. Chicago, University of Chicago Press.
- Agrupación Ciudadana por la Despenalización del Aborto, Asociación Azul Originario (AZO), Centro de Derechos Reproductivos, CRISTOSAL, Fair Trials International, Fundación para el Debido Proceso (DPLF, por sus siglas inglés), Instituto de Derechos Humanos de la UCA (Idhuca), Mujeres Libres, Organización Mundial Contra la Tortura (OMCT), Servicio Social Pasionista (SSPAS). (2022). *Informe de Organizaciones de Derechos Humanos de la Sociedad Civil al Comité Contra La Tortura de las Naciones Unidas*. Retrieved from [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FSLV%2F50554&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FSLV%2F50554&Lang=en)
- Al Jazeera. (27 February 2023). Photos: Inside El Salvador's new 'mega prison' for gang members. *Al Jazeera*. Retrieved from <https://www.aljazeera.com/gallery/2023/2/27/photos-inside-el-salvadors-new-mega-prison-for-gangster>
- Alston, P. (2017). The Populist Challenge to Human Rights. 9(1) *Journal of Human Rights Practice*, 1-15. <https://doi.org/10.1093/hux007>
- Amnesty International. (2023). *Behind the veil of popularity: Repression and regression of human rights in El Salvador*. Retrieved from <https://www.amnesty.org/en/documents/amr29/7423/2023/en/>
- Asamblea Legislativa. (27 March 2022). Pleno legislativo aprueba régimen de excepción para frenar ola de violencia.
- Asamblea Legislativa. (27 March 2022). Decree No 333.
- BBC Mundo. (14 July 2023). El Salvador's secretive mega-jail. *BBC Mundo*. Retrieved from <https://www.bbc.com/news/resources/idt-81749d7c-d0a0-48d0-bb11-eaab6f1e6556>
- Beauchamp, Z. (8 April 2023). Meet the MAGA movement's new favorite autocrat. *Vox*. Retrieved from <https://www.vox.com/2023/4/8/23653324/nayib-bukele-trump-american-right-crime>
- Brundage, F. (2020). *Civilizing Torture: An American Tradition*. Harvard: Harvard University Press.
- Centenera, M. (12 March 2024). Cuatro asesinatos al azar y terror narco en las calles: Milei endurece su política de seguridad en Rosario. *El País*. Retrieved from <https://elpais.com/argentina/2024-03-12/cuatro-asesinatos-al-azar-y-terror-narco-en-las-calles-milei-endurece-su-politica-de-seguridad-en-rosario.html>
- Corman, L. (2022). Trauma as a Möbius strip: PTSD, animal research, and the Oak Ridge prisoner experiments. In Montford, K.S. & Taylor, C. (Eds.), *Building Abolition: Decarceration and Social Justice* (pp. 269-285). London and New York: Routledge.
- Guillén, B. (4 October 2023). Honduras, the country where the Bukele method failed. *El País*. Retrieved from <https://english.elpais.com/international/2023-10-03/honduras-the-country-where-the-bukele-method-failed.html>
- Human Rights Watch and Cristosal. (2022). "We Can Arrest Anyone We Want" Widespread Human Rights Violations Under El Salvador's "State of Emergency". Retrieved from [https://www.hrw.org/sites/default/files/media\\_2022/12/elsalvador1222web.pdf](https://www.hrw.org/sites/default/files/media_2022/12/elsalvador1222web.pdf)
- Inter-American Commission on Human Rights. (2015). Towards the Closure of Guantanamo Bay. OAS/Ser.L/V/II.Doc. 20/15.
- Inter-American Commission on Human Rights. (2021). Situation of human rights in El Salvador. OEA/Ser.L/V/II.Doc. 278.
- Inter-American Commission on Human Rights. (2022). Follow-up of recommendations issued by the IACHR in its Country or Thematic Reports, El Salvador, Annual Report, Chapter V.
- International Crisis Group. (2022). A Remedy for El Salvador's Prison Fever. Retrieved from <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/96-remedy-el-salvadors-prison-fever>
- Judge Power-Forde. (2013). Concurring Opinion, *Vinter and Others v United Kingdom*, European Court of Human Rights, Application nos 66069/09 130/10 3896/1.
- La 40: arte y justicia. (2024). 'Mega Prison' Dearq 38, 106. <https://doi.org/10.18389/dearq38.2024.09>
- Mavronicola, N. (2021). *Torture, Inhumanity and Degradation under Article 3 of the ECHR: Absolute Rights and Absolute Wrongs*. Oxford, New York and Dublin: Hart Publishing.
- Morbiato, C. (1 December 2023). Detainees in El Salvador's gang crackdown cite abuse during months in jail. *Independent*. Retrieved from <https://www.independent.co.uk/news/pedro-ap-el-salvador-mexico-city-nayib-bukele-b2456601.html>
- Oette, L. (2024, forthcoming). *The Transformation of the Prohibition of Torture in International Law*. Oxford: Oxford University Press.
- Office of the High Commissioner for Human Rights. (22 May 2023). El Salvador: Extended state of emergency undermines right to fair trial, UN experts say. Retrieved from <https://www.ohchr.org/en/press-releases/2023/05/el-salvador-extended-state-emergency-undermines-right-fair-trial-un-experts>
- Paúl, F. (26 February 2024). 4 cambios que muestran cómo se ha transformado el crimen organizado en América Latina. *BBC El Mundo*. Retrieved from <https://www.bbc.com/mundo/articles/cjmd4v847ewo>
- Pérez-Sales, P. (2017). *Psychological Torture*. London and New York: Routledge.
- Quesada, J.D. (7 February 2024). Inside Nayib Bukele's Alcatraz:

- 'It is impossible to escape. These psychopaths are going to spend their whole lives behind bars here'. *El Pais*. Retrieved from <https://english.elpais.com/international/2024-02-07/inside-nayib-bukeles-alcataz-it-is-impossible-to-escape-these-psychopaths-are-going-to-spend-their-whole-lives-behind-bars-here.html>.
- Renteria, N. & Kinoshian, S. (4 February 2024). El Salvador's Bukele re-elected as president in landslide win. *Reuters*. Retrieved from <https://www.reuters.com/world/americas/el-salvador-president-bukele-poised-another-landslide-voters-head-polls-2024-02-04/>
- Rocker, S. (2023). La mega cárcel de Bukele: una oportunidad para preguntarse por la prisión y su ideología. *Revista Hekatombe*. Retrieved from <https://www.revistahekatombe.com.co/la-mega-carcel-de-bukele-una-oportunidad-para-preguntarse-por-la-prision-y-su-ideologia/>
- Rosen, J.D. (2021). Corruption, Crime, and Gangs in Central America: Understanding the Root. *Small Wall Journals El Centro*. Retrieved from <https://smallwalljournal.com/jrnl/art/corruption-crime-and-gangs-central-america-understanding-root-causes>
- Rosen, J.D., Cutrona, S. & Lindquist, K. (2023). Gangs, violence, and fear: punitive Darwinism in El Salvador. *Criminal Law and Social Change*. 79(2), 175–194. doi: 10.1007/s10611-022-10040-3
- Sánchez-Ancochea, D. (2021). *The Costs of Inequality in Latin America: Lessons and Warnings for the Rest of the World*. London: IB Tauris.
- Serrano, G. (7 February 2024). Photos: A tour of Nayib Bukele's mega-prison. *El Pais*. Retrieved from <https://english.elpais.com/international/2024-02-07/photos-a-tour-of-nayib-bukeles-mega-prison.html>.
- Steyn, J. (2004). Guantanamo Bay: The Legal Black Hole. *International and Comparative Law Quarterly*, 53(1), 1-15.
- SRT. (2005). Report of the Special Rapporteur on the question of torture, Manfred Nowak. UN Doc E/CN.4/2006/6.
- SRT. (2020). Torture and other cruel, inhuman or degrading treatment or Punishment: Report of the Special Rapporteur. UN doc A/HRC/43/49.
- Timmermann, J. (14 November 2023). Noah Bullock: "El estado de excepción instaló un gulag tropical en El Salvador". *cenital*. Retrieved from <https://cenital.com/noah-bullock-el-estado-de-excepcion-instalo-un-gulag-tropical-en-el-salvador/>
- Timmerman, J. (15 January 2024). Ecuador is copying El Salvador's war on gangs – but it will only add to the spiral of violence. *Guardian*. Retrieved from <https://www.theguardian.com/commentisfree/2024/jan/15/ecuador-el-salvador-war-gangs-spiral-violence-latin-america-organised-crime>
- United Nations (2021). United Nations System Common Position on Incarceration.
- United Nations Committee against Torture (2022). Concluding observations on the third periodic report of El Salvador. UN doc CAT/C/SLV/CO/3.
- United Nations Development Programme (2021). Regional Human Development Report: Trapped: High Inequality and Low Growth in Latin America and the Caribbean.
- Ventas, L. (15 February 2024). Coming face to face with inmates in El Salvador's mega jail. *BBC*. Retrieved from <https://www.bbc.co.uk/news/world-latin-america-68244963>
- Volpi, J. (12 March 2024). Una epidemia de violencia. *El Pais*. Retrieved from <https://elpais.com/opinion/2024-03-12/una-epidemia-de-violencia.html>
- Waldron, J. (2010) *Torture, Terror, and Trade-Offs: Philosophy for the White House*. Oxford: Oxford University Press.
- Webster, E. (2018). *Dignity, Degrading Treatment and Torture in Human Rights Law: The Ends of Article 3 of the European Convention on Human Rights*: London and New York: Routledge.
- Zach, G. (2019) Article 1: Definition of Torture. In Nowak, N., Birk, M. & Molina, G. (Eds) *The United Nations Convention against Torture and its Optional Protocol* (pp. 23-71). 2nd edn. Oxford: Oxford University Press.

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## Peace between Israel and Palestine?

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### Bolivia, November 2023

Talking to a relative of mine who lives in Israel, we exchanged by email about the Hamas terrorist attack and the brutal response of the Israeli Armed Forces that affected the entire Palestinian population of Gaza. He spoke to me about the moral right of the Jewish people to exist and I replied that the Palestinian people also had the moral right to exist. That ended the respectful dialogue we had. The Palestinian people's right to exist remained unanswered.

On October 28, the Prime Minister of the State of Israel, Benjamin Netanyahu, in his speech, spoke of "the war of humanism" against Hamas, referring to it as "the war of light against darkness", ignoring the Palestinian people, like the European states that justified the colonial wars of the 19th century exterminating entire populations by claiming to bring civilization to the savage, primitive people. In Netanyahu's speech, the Palestinian people's right to exist was not an issue. And so far in the attack on Gaza, he talks about the fight against Hamas and ignores talking about the Palestinian population, as if it did not exist.

It is not by ignoring the people, denying its existence, its identity, and annihilating it, that its memory will disappear. The experience of the Shoah has shown us that. Annette Wieviorka begins her work *L'ère du témoin* (Wieviorka, 1998) with a statement by Simon Dubnov to his comrades in the Riga

ghetto before he was murdered on December 8, 1941: "Good people, do not forget; good people, tell; good people, write!"

Just as the Jewish people have the Shoah, with all its individual and collective transgenerational traumatic effects, the Palestinian people have the Nakba with similar effects. For the Palestinian people, the memory of the Nakba is very much present as the Shoah is for the Jewish people. The difference is that in the West the Shoah is discussed, but the Nakba is ignored.

For centuries the Sephardic and Mizrahi Jews (which the Israeli sociologist Yehuda Shenhav (2006) calls the "Arab Jews") have lived in a peaceful coexistence with the mostly Muslim natives of North Africa, which was not possible in the whole of Christian Europe plagued by histories of persecution, pogroms, inquisitions and to conclude with the extermination plan of the Shoah. In this context one can imagine what it means to conclude Pesach (Passover) and Yom Kippur (Day of Atonement) with L'Shana Haba'ah B'Yerushalayim (Next year in Jerusalem). In situations of insecurity and possible outbreaks of anti-Semitism, believing in an alternative that symbolized a salvation, a liberation from oppression, from existential insecurity, the prayer L'Shana Haba'ah B'Yerushalayim is a message of hope, and at the same time the bearer of an illusion. What the prayer makes obvious is that the real Jerusalem, the land of Zion, has populations rooted there for centuries, with their cultures and traditions. To this day, part of the Israeli population cannot imagine that other peoples could have the same right to live on the same land. The longing to be able to live "finally" in a situation of security among their own people, that paradise which would free them from the constant threat of persecution, has its psychosocial effects which politicians take advantage of to justify the unjustifiable on the part of the State of Israel against Palestine.

The Palestinian people, for their part, after centuries under Ottoman rule, became a British protectorate in the first half of the 20th century. They lived for centuries under conditions typical of an oppressed and exploited colonized society, but what happened in 1948, they had never experienced before. It is what the Palestinian people will call the Nakba, i.e. the "catastrophe".

With the UN Resolution of November 29, 1947, the Palestinian territory was divided into two states: one Jewish and the other Arab, causing an intensification of tension on both sides. Attacks on Jewish settlements increased, but in April 1948, the situation took a catastrophic turn, causing 750,000 Palestinians to flee the countryside and the city<sup>2</sup>. On April 9, the massacre

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2 In 1950, when UNRWA (United Nations Relief and Works

of the inhabitants of Deir Yasin<sup>3</sup> occurred, which, according to Uri Avnery (1954), was decisive in the panic reaction of the Arab population. Edward Said recounts:

“More than any other, the event that emerges from that dark period is Deir Yasin, the rapes, the beheaded children, the disemboweled women.... It takes time to understand the context and the true meaning of Deir Yasin... it was part of an overall plan aimed at emptying Palestine of its Arab population.” (Said, 1999)

Anthropologist Éléonore Merza Bronstein is of the same opinion: “I do not believe that the Zionist project is aimed at exterminating the Palestinians, I rather believe that the intention is to “de-Palestinize” so that we can live in peace among ourselves.” (Merza & Bronstein, 2018). In 1948, 678 Palestinian localities were destroyed by the Israeli Armed Forces and 22 localities by the Arab Armed Forces, as the Palestinians had no army<sup>4</sup>.

In the face of this desolate situation, there have always been Jewish minorities who have tried to react, to break the concealing silence about Israel’s responsibility for the Nakba. One such initiative is the Israeli non-profit organization Zochrot (They Remember), founded in 2002 by Eitan Bronstein, which aims to promote awareness of the Nakba. The motto: “Commemorate, witness, recognize and repair”. The founding action was

to plant posters in all the places in the country where the destroyed Palestinian villages were located and to organize tours for Jews and Arabs, provided by the refugees and their families of those villages.

As Edward Said says: “I have never stopped thinking that there is no military solution to the Israeli-Arab conflict and that the only hope lies in a dignified and loyal coexistence “ (Said, 1999). It was him who founded, in 1999, together with Daniel Barenboim, the West-East Divan Orchestra, which brings together Palestinian and Israeli musicians.

But, as long as the international powers have other intentions and other interests, a dignified peace will be a titanic task.

#### References

- Avnery, U. (1954). *Les réfugiés arabes, obstacle à la paix en Palestine*, Paris, Le Monde, 9 and 10-11 Mai 1954
- Merza, E. & Bronstein, E. (2018). *NAKBA - Pour la reconnaissance de la tragédie palestinienne en Israël*. Paris, Omniscience.
- Said, E.W. (1999). *Israel, Palestine - L'égalité ou rien*. Paris, La Fabrique.
- Shenhav, Y. (2006). *The Arab Jews. A Postcolonial Reading of Nationalism, Religion and Ethnicity*. California, Stanford University Press.
- Wioviorca, A. (1998). *L'ère du témoin*. Paris, Plon.

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Agency for Palestine Refugees in the Near East) began its operations, 750,000 people had Palestine refugee status. Today, more than 5.9 million are waiting to move from refugee status to full citizenship.

<sup>3</sup> More than 100 Palestinian Arabs killed.

<sup>4</sup> Data drawn from Noga Kadman. *Erased from Space and Consciousness. Israel and the depopulated Palestinian Villages of 1948*. Indiana University Press, 2015, p. 189.

# Presence of Inmates with Mental Health Problems in Detention and Correctional Centers in the Republic of Kosovo

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## Abstract

*Background.* Conventions adopted by the United Nations and Council of Europe pay special importance to the treatment of prisoners with mental health problems. Their treatment is closely related to respect for human dignity, and the prohibition of torture, cruel and degrading treatment or punishment. The European Court of Human Rights, in many cases, has ruled that the detention of a mentally-ill person can raise issues under Article 3 of the European Convention on Human Rights and that the lack of adequate medical care can result in treatment in contravention of this article. The Republic of Kosovo is not a member of the United Nations and Council of Europe. However, it has incorporated in its Constitution a number of Conventions adopted by the United Nations and Council of Europe. Also, Kosovo has adopted a legal framework which prohibits torture, cruel and degrading treatment or punishment in accordance with the international human rights standards. The Constitution also provides that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted in accordance with the case law of the European Court of Human Rights.

*Methods.* Review of Ombudsperson's, Committee for the Prevention of Torture, Prison Health Department of Kosovo Ministry of Health reports, as well as reports of the NGOs in Kosovo.

*Results.* The treatment of prisoners with serious mental problems in detention and correctional centers in the Republic of Kosovo remains a serious challenge, despite the efforts of the competent authorities to change this situation and to increase human and institutional capacities. Prisoners with serious mental health problems continue to be accommodated in detention and correctional centers, instead of being accommodated in the

relevant health institutions, which might amount to a violation of article 3 of the European Convention of Human Rights.

Keywords: Human Rights, mentally-ill prisoners, international standards, applicable legislation in Kosovo

## Kosovo Legal framework

Kosovo has adopted relevant legislation which protects human rights and fundamental freedoms of persons deprived of their liberty. The Kosovo Constitution, adopted in 2008, includes several articles which protect fundamental rights and freedoms of persons deprived of their liberty. Medical services in prison facilities are provided by the Prison Health Department of the Ministry of Health. The Law No. 05/L-025 on Mental Health was adopted in 2015. The Law on Mental Health, lays down a procedure for admission to mental health establishments of persons who require involuntary treatment. The Law No. 08/L-132 on the Execution of Criminal Sanctions provides that the convicted person will enjoy the same health care standards that are available in the community. If there are suspicions that a convicted person has a mental disorder or emotional distress, appropriate measures shall be taken without delay, in accordance with the relevant legislation and rules regarding psychiatric care and mental health. The Criminal Procedure Code of Kosovo provides that the personality and dignity of a person held in detention on remand must not be abused. The detainee on remand must be treated in a humane manner and his physical and mental health must be protected.

## International standards

The UN Standard Minimum Rules for the Treatment of Prisoners, widely known as the Mandela Rules, are among the most important international documents that set standards and obligations for States regarding the treatment and accommodation of prisoners with mental health problems. The Mandela Rules provide that if necessary, prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals. The European Committee for the Prevention of Torture ((hereinafter, the CPT) standards, with regards to treatment of prisoners with mental health problems, provide that mentally ill prisoners should be kept and cared for in a hospital facility which is adequately equipped and has appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system. The European Prison Rules, amongst others, stipulate that when a pris-

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oner is diagnosed with mental health problems, he should not be kept in prison, but should be transferred to an adequate psychiatric institution, due to the risk of suiciding and self-harm. The European Court of Human Rights (hereinafter, ECHR), in the case of *Keenan v. United Kingdom*, found a violation of Article 3 of the European Convention on Human Rights, in a case where a prisoner had suicided, with regards to the lack of medical records, lack of psychiatric monitoring and supervision that was not adequate for the treatment of a mentally ill person.

### International and local reports on situation of mentally ill prisoners in Kosovo

#### *European Committee for the Prevention of Torture (CPT)*

The Republic of Kosovo is not yet a member of the Council of Europe. However, the CPT, visits Kosovo based on a Technical Agreement signed with the United Nations Mission in Kosovo known as UNMIK. The CPT visited Kosovo in 2007, 2010, 2015 and 2020.<sup>2</sup> The CPT, in its reports on visits to Kosovo expressed concern regarding the presence of mentally ill prisoners in pre-trial and correctional centers, their treatment and the lack of institutional capacities to accommodate them in specialized health institutions outside prison system. According to the CPT report on visit to Kosovo in 2010, the delegation, during the visit, noticed that the psychiatric services have not been reinforced at Dubrava Prison. The CPT report states further that, given the high prevalence of mental disorders in the prison and of problems related to drug addiction, the part-time presence (three times a week) of a psychiatrist is clearly insufficient. In its visit report to Kosovo in 2015, the CPT expressed its serious concern about the inadequate psychiatric care provided to patients suffering from severe mental disorders in the hospital unit at Dubrava Prison. In this reports the CPT, amongst others, states:

*“As regards psychiatric care, the psychiatric ward of the hospital unit at Dubrava Prison was accommodating nine patients, six of whom suffered from severe mental disorders (such as psychosis). The care provided to the latter patients appeared to be highly inadequate, there being no meaningful occupational or therapeutic activities, apart from pharmacotherapy and regular consultations with a psychiatrist”.* It further states that Forensic Psychiatric Institute in Prishtinë/Priština would offer far more suitable conditions to treat severely mentally ill prisoners and was also operating far below its official capacity (at the time of the visit, there were only twelve forensic patients in the ward for psychiatric treatment with 24 beds).

A similar situation was found by CPT also during their visit to Kosovo in 2020. According to the CPT visit report in 2020:

*“...it appeared that more resources were required in order to appropriately address the needs presented by the prisoner population at Prishtinë/Priština where some 60 inmates held in the establishment at the time of the visit were suffering from a mental disorder”.* In this report, The CPT further states:

*“Despite the recommendation made following the previous visit, the psychiatric care provided to prisoners on the psychiatric ward of the hospital unit at Dubrava Prison remained unsatisfactory. At the time of the visit, the ward was accommodating seven patients with mental disorders, including four with severe mental disorders. The psychiatric care provided to them was still limited to pharmacotherapy and individual consultations with a psychiatrist”.* It also states that the transfer of the patients concerned to the Forensic Psychiatric Institute in Prishtinë/Priština is not immediately feasible.

#### *The Ombudsperson's reports*

Shortcomings as regards treatment, lack of institutional capacities and human resources available for the treatment of mentally ill prisoners, were also reported by the Ombudsperson Institution of Kosovo through the annual and National Preventive Mechanism visit reports.<sup>3</sup> The National Preventive Mechanism (NPM) of the Ombudsperson, during visits conducted to detention and correctional centers in 2019, noticed lack of personnel and institutional capacities, as well as presence of mentally ill prisoners in these institutions, instead of being placed in adequate health institutions. Furthermore, the NPM of the Ombudsperson expressed its concern and recommended that the competent authorities should increase their efforts to provide adequate psychiatric services to prisoners with serious mental disorders, including psychosocial activities and occupational therapy, in addition to regular therapy and consultations with a psychiatrist. According to the Ombudsperson's NPM reports, the situation did not change in 2021 and 2022 as well. The NPM annual report 2023, states that during the visits in 2022, the NPM noticed the presence of prisoners with mental problems in pre-trial and correctional centers. Despite the doctor's recommendations, due to lack of capacities in adequate health facilities, prisoners with serious mental problems continue to be kept in detention and correctional centers.

Kosovo Rehabilitation Center for Torture Victims (hereinafter, KRCT), an NGO, authorized to visit all places of

2 All CPT reports on visits to Kosovo are available at: <https://www.coe.int/en/web/cpt/kosovo> (29.02.2024)

3 All Ombudsperson's National Preventive Mechanism Reports are available at: <https://oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/> (29.02.2024)

deprivation of liberty, reported that adequate management of prisoners with mental disorders remains among the main challenges as regards the treatment of prisoners in Kosovo in general. Correctional institutions have no special institution for placement and treatment of prisoners with mental disorders. According to KRCT, such a situation is a result of the failure of authorities to provide to prisoners continuous psychiatric care, lack of adequate facilities and lack of correctional staff.<sup>4</sup>

Based on the above-mentioned situation, the Office of the Council of Europe in Pristina and the Ombudsperson of Kosovo, in 2021 organized round tables and conferences where, together with the competent authorities, the challenges of treating prisoners with mental health problems were discussed, as well as other challenges regarding mandatory psychiatric treatment. During these meetings, the participants agreed that the competent authorities should take adequate action to treat prisoners of this category in accordance with applicable Kosovo legislation and international standards for the Human Rights and Fundamental Freedoms of prisoners. The competent ministries, during these meetings, presented their plans to resolve this situation. In this meeting, the Minister of Justice, amongst others, emphasized that, *“In the correctional institutions there is a considerable number of convicts who are persons with mental health disorders and this presents a great challenge for their management”*. As part of the efforts to improve the condition of prisoners with mental health problems, on February 28, 2023, in Dubrava Correctional Center, a special ward for the treatment of prisoners with special needs was planned to be established. However, the Department of Health in Prisons (henceforth, DHP), which is responsible for the provision of health services in detention and correctional centers, has published its annual report 2023, where it also expressed concern

about the presence of a large number of prisoners with mental health problems in correctional and detention centers, due to lack of capacities to place them at Psychiatric Forensic Institute.

### Conclusion

According to reports of Ombudsperson's NPM, CPT reports, Ministry of Health Prison Health Department reports, as well as reports of Kosovo Rehabilitation Center for Torture Victims, presence and treatment of prisoners with serious mental health problems in detention and correctional centers in the Republic of Kosovo remains a serious challenge, despite the efforts of the competent authorities to change this situation and to increase human resources and institutional capacities. Prisoners with serious mental health problems continue to be accommodated in detention and correctional centers, instead of being accommodated in the relevant health institutions, due to the lack of institutional capacities and personnel. These conditions are not in accordance with international standards and applicable legislation in the Republic of Kosovo for the treatment of prisoners with such health conditions.

### Recommendation

The Republic of Kosovo must take further steps in order to treat prisoners with mental health issues in accordance with the international Human Rights Standards, CPT and Ombudsperson's recommendations and applicable legislation in the Republic of Kosovo.

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<sup>4</sup> Kosovo Rehabilitation Center for Torture Victims, Monitoring Report, 2021, p. 24, available at: [https://krct.org/wp-content/uploads/2023/10/Human-Rights-in-Kosovo-Correctional-Institutions\\_Monitorin-Report\\_2021.pdf](https://krct.org/wp-content/uploads/2023/10/Human-Rights-in-Kosovo-Correctional-Institutions_Monitorin-Report_2021.pdf).



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