

IN THE EUROPEAN COURT OF HUMAN RIGHTS

in the case of

Tsaava and others v. Georgia

Applications nos. 13186/20, 16757/20, 20129/21, 20175/21 and 39382/21

THIRD-PARTY OBSERVATIONS OF NINE INTERVENING ORGANISATIONS

A. INTRODUCTION

1. These submissions are made on behalf of Hungarian Civil Liberties' Union, American Civil Liberties Union, Canadian Civil Liberties Association, Centro de estudios legales y sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), members of the International Network of Civil Liberties' Organizations (INCLEO), third-party interveners in the case of *Tsaava and others v. Georgia*, pursuant to the leave granted by the President of the Section on 25 November 2024.
2. Following a brief description of the kinetic impact projectiles (KIPs), or "rubber bullets", as they are commonly known (section "B" below), these submissions will discuss their human health impacts (section "C" below) and the applicable international regulatory framework (section "D" below), as well as set out the obligations of States concerning the planning and conduct of police operations involving the use of KIPs (section "E" below).
3. The submissions below are based on the report "Lethal in Disguise 2" published by INCLO and Physicians for Human Rights in 2023 (lethalindisguise.org), a follow-up to the previous version of the same report published in 2016.

B. DESCRIPTION OF KIPs

4. Kinetic impact projectiles (KIPs) are crowd-control weapons (CCWs). They are bullet-like missiles used in various law enforcement contexts as a deterrent through the pain of impact. Shot from firearms, these weapons were developed to offer the deterrent power of handheld baton strikes from greater physical distances. The staggering variety of KIPs has led to an abundance of common and trade names for what are often referred to as "baton rounds." KIPs are most commonly dubbed "rubber bullets" regardless of their composition: modern KIPs are most commonly made of plastic ("foam-tipped plastic bullets," "plastic baton rounds," "sponge grenades," "Flashball rounds"), metal ("rubber-coated metal bullets," "pellets," "birdshot," "flexible baton rounds," "bean bag rounds," "Super-sock"), or other materials such as wood or rock salt.
5. Some bullets are designed to be fired as a single missile, while others are fired as a group of small projectiles. The latter are sometimes known as "pellets," "scatter shot", or "multiple projectile rounds", where many small- to medium-sized spheres are fired at a broad target. "Bean bag rounds" also consist of small metal pellets that are stitched into a synthetic cloth bag designed to expand on impact and therefore behave as a single

projectile. Newer weapons include projectiles with a hard outer shell encasing chemical irritants that explode upon impact, or “attenuated energy projectiles,” where a hollow tip can limit the risk of ricochet or penetration by crushing into itself on impact.

6. Of special concern are metallic rounds used for crowd control. Due to their density and typically high velocities of impact, these pose greater inherent risks than rounds made of any other material. Rubber-coated metal bullets designed as KIPs have been used for crowd control. The impact of metal hunting bullets has been arbitrarily designated “less-lethal” by virtue of protocols intended to reduce their lethality. While both types of weapons are used for crowd control in a similar manner to other KIPs, their inherent killing power has left a huge number of injuries, disabilities, and deaths in the wake of their use.
7. KIP weapons exemplify the “elephant in the room” problem of less-lethal weapons: To date, no organisation, study, or report has clearly and objectively defined what makes a weapon lethal, less-lethal, or non-lethal – much less acceptably “safe.” The decision is typically left to the very organisations tasked with procuring CCWs—or the government entities demonstrators often protest against – to determine whether said weapons achieve a level of acceptable lethality. There are heterogeneous rules across countries and jurisdictions, ranging from complete bans to free use of all KIPs and many permutations in between.

C. HUMAN HEALTH EFFECTS OF KIPs

a. Overview

8. The health impacts of KIPs depend on a number of factors, including the type of projectile, the characteristics of the weapon it is shot from, the distance from which the shot is fired, the user’s skill, and the inherent imprecision of the weapon itself. Although KIPs are designed to minimise penetration and limit the force of blunt trauma, injuries from both mechanisms have been documented.
9. Most KIPs are propelled by a powder charge and are best considered a subcategory of firearm. KIP injuries, like all trauma and specifically firearm injuries, can be non-penetrating, where the pellet does not enter the skin or tissue (such as blunt force trauma) or penetrating (where the pellet does enter and in the case of perforating injuries, also exits the tissue). The severity of injury from bullets is dependent on the missile energy on impact (related to projectile mass, distance, and muzzle velocity), missile design (including the calibre and shape), and the characteristics of the target tissue.
10. KIPs can cause severe injuries through both blunt and penetrating trauma. Blunt trauma directly damages tissue by crushing but can also lead to potentially life-threatening injuries from organ rupture, bone fracture, and internal haemorrhage. Blunt impacts to the head pose a very high risk of traumatic brain injury. Tissue damage from penetrating and perforating wounds can cause laceration of skin and solid organs, stretching of tissue in the track of the projectile and shockwaves of pressure in the tissue. Penetrating trauma to the brain causes traumatic brain injury, such as skull fractures and intracranial haemorrhage and is often instantly fatal. Piercing the heart or lungs directly compromises

the circulation system and the body's oxygen exchange system, which can result in death within minutes. Severed arteries can also lead to rapid death through exsanguination (bleeding out). Spinal cord or nerve injuries can be permanently debilitating, causing motor and/or sensory deficits. Injuries to other organs may require rapid emergency surgery to avoid fatality, given the risks of internal bleeding, organ damage, and secondary infection (particularly from bowel perforation). Furthermore, the risk of permanent disfigurement or disability is high from both blunt and penetrating trauma, either through compromise of non-vital organs (such as the eyes) or damage to the skin or musculoskeletal system.

b. Results of the updated systematic review

11. Back in 2017 an authoritative paper which is one of the most frequently cited documents in the field of CCWs concluded that KIPs, often called rubber or plastic bullets, were used commonly in crowd-control settings. Those projectiles had caused significant morbidity and mortality during the preceding 27 years, much of it from penetrative injuries and head, neck and torso trauma. Given their inherent inaccuracy, potential for misuse and associated health consequences of severe injury, disability and death, KIPs did not appear to be appropriate weapons for use in crowd-control settings. There was an urgent need to establish international guidelines on the use of crowd-control weapons to prevent unnecessary injuries and deaths.¹
12. In "Lethal in Disguise 2" INCLIO and PHR updated the systematic review of medical literature published from 2016 to 2021. Collectively, the systematic reviews identified 4,174 individuals injured by KIPs and 65 fatalities as a result of KIP impact. At least 1,245 individuals have likely sustained permanent injuries as a result of KIPs.
13. Post-2016 studies detailed 2,190 individuals injured by KIPs, compared to 1,984 found in 2016. Of these, 12 perished as a direct result of being shot with impact projectiles. All deaths occurred secondary to injuries inflicted by metallic projectiles. Over the years 2016-2021, the medical and scientific literature identified higher numbers of total individuals affected, major injuries, permanent injuries, head injuries, and ocular injuries. Deaths, on the other hand, declined. This does not necessarily indicate a relative increase in the use of less lethal weapons; rather, the high number of injuries over the past five years could represent an increasing awareness of and interest in documenting the health hazards posed by impact projectiles.
14. These numbers should be considered a minimum estimate of the true health impacts of KIPs. Our review is limited in scope to solely the medical and scientific literature. Literature reviews are subject to selection bias guided by research priorities, resources, geographic bias, and many other issues. Many individuals will not seek medical attention for their injuries due to economic constraints or fear for their personal safety and will, therefore, not be counted per our methodology.

c. KIPs of special concern

¹ R.J. Haar, V. Iacopino, N. Ranadive, M. Dandu, Sh.D. Weiser, "Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review", *British Medical Journal*, 2017:7 at 1-9.

15. KIPs produce injuries from metallic rounds (including “bean-bag” rounds), rubber rounds, plastic rounds, as well as hybrid rounds (such as “pepper-ball” guns, classified as “other”). Since 2016, a host of literature regarding so-called “pellet guns” firing metal pellets used for crowd control weapons has been published, illustrating the highly indiscriminate and dangerous nature of metallic birdshot. The vast majority of the casualties from multi-projectile rounds come from the use of metal birdshot in Indian-controlled Kashmir. Their deleterious effect on public health is far out of proportion relative to any other kind of KIP. Birdshot is also unique as an unmodified lethal munition made non-lethal only on a technicality by protocols of use and laws in a given country. While fewer than half of the studies identified pertain to these weapons, they are responsible for 82% of the injured and killed in this review.
16. Two countries are almost wholly responsible for this tally: India and Chile, where different kinds of multi-projectile KIPs are widely used for crowd control. Shotgun shells carrying hundreds of metal pellets have been used for over a decade for crowd control in the Indian Union Territory of Jammu and Kashmir.
17. Multi-projectile KIPs are also responsible for the upsurge in ocular injuries reported in the literature in countries where they are being used. These injuries are severe and consist of both closed- and open-globe injuries, which often require surgical intervention and, in almost all cases, leave the victim with reduced visual acuity or permanent vision loss in the affected eye(s).
18. Another example of the harms of multi-projectile KIPs comes from Chile. Chilean security forces used a kind of multiple projectile KIP known as “rubberized buckshot” during the nationwide protests starting in October of 2019, resulting in over 400 ocular injuries, that is loss of an eye or even vision.
19. The number of injuries from metal birdshot found in our literature review dwarfs those from other KIPs. Metal birdshot is also responsible for all deaths not attributable to rubber-coated metal bullets. The disproportionate health impacts of metal birdshot demonstrate that these weapons should be considered lethal and must never be used for crowd control. Furthermore, the alarming similarities in ocular injury prevalence between metal birdshot and rubberized buckshot strongly suggest all multiple projectile KIPs, in particular, pose a grave risk of disability. They should all be banned for crowd control.

D. INTERNATIONAL LAW REGULATIONS ON CCWs AND KIPs

20. In 2020 Human Rights Committee adopted General Comment no. 37 on right to peaceful assembly under Article 21 of the ICCPR (CCPR/C/GC/37, 17 September 2020). The findings concerning planning and conduct of police operations at assemblies set out below are based on the General Comment no. 37. Specifically, para. 88 of the General Comment emphasises that rubber-coated metal bullets should be subject to the same regulations as firearms because of their danger to human life and health.
21. Also in 2020 the *United Nations Human Rights Guidance on the Use of Less-Lethal Weapons in Law Enforcement* was published as the result of a two-year process of research, drafting and consultation led by the Office of the United Nations High Commissioner for Human

Rights. The Guidance, which also serves as the basis for the requirements for planning and conduct of policing operations set out below, specifically deals with the KIPs. It aims to limit their use to only in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public (para. 7.5.2); they cannot be means of dispersal of an assembly.

22. Among the risks of the use of KIPs the *Guidance* lists targeting parts of the body other than the lower abdomen and legs (para. 7.5.3), and insists that to meet international standards, impact projectiles should be capable of striking an individual within a 10-centimetre diameter of the targeted point when fired from the designated range. Skip-firing projectiles off the ground causes an unacceptable risk of serious injury due to their inaccuracy (para. 7.5.4).
23. Among potentially unlawful use of KIPs, the *Guidance* lists firing them in automatic mode, multiple projectiles fired at the same time, firing KIPs that were not tested accurate to hit a specific part of a human body (paras. 7.5.5-7.5.7).
24. Other regions have advanced a series of standards on this matter. For example, the Inter-American Commission of Human Rights (IACHR) has addressed the potential human rights violations derived from the misuse of less-lethal weapons in their 2019 *Report on Protest and Human Rights*. The IACHR considered that States must: a) ensure the appropriate and proportionate use of less lethal weapons; b) develop clear protocols for action that are respectful of international standards; c) establish appropriate tests for approving the acquisition and incorporation of new weapons into their regulatory systems; d) have multidisciplinary experts who do not have conflicts of interest with commercial activities carry out independent testing of the weapons; e) develop standards to regulate critical aspects of weapons safety such as the composition and concentration of chemical irritants, the discharge levels of electrical devices, the volume and frequency of new acoustic weapons and the accuracy levels required for projectiles; f) control the trade of these weapons in the same manner as applicable to conventional weapons; g) incorporate specific training for agents oriented towards the safe use of each particular weapon; h) strengthen the prevention of inappropriate or abusive uses that could result in the injury or death of persons; i) prohibit the use of these weapons in contexts or in front of persons that could imply specific risks to physical integrity (paras. 108, 120, 124, 125 and 127).

E. PLANNING AND CONDUCT OF POLICE OPERATIONS INVOLVING CCWs, INCLUDING KIPs

25. The injuries inflicted by CCWs are as widespread as they are devastating. The use of KIPs, chemical irritants, water cannons, disorientation devices, acoustic weapons, and batons, among others, has produced a diverse array of negative health impacts which extend beyond physical ones. Beyond individual injuries, the full toll of CCWs must include the psychological trauma they produce, the permanent disability they cause, the social cost of CCWs paid by targeted communities, and, significantly, the disproportionate impact CCWs have on certain vulnerable groups. The continued use and growing potency of CCWs is

particularly concerning. The potential use of inherently indiscriminate impact weapons that are new, including multi-projectile KIPs, stun grenades with shrapnel, and Venom, are cause for even more significant concern.

26. It is worth emphasising that the health effects described above may be exacerbated by factors that serve to impede access to medical care. These include CCW-related hazards to medical professionals, restricted access to medical transport, forbidding of medical assistance at protests, direct attacks on medical professionals and street medics, and the chilling effect of detaining those injured by CCWs at medical facilities, which leads people not to seek necessary medical attention. These barriers to access to timely medical care play a significant role in increasing the risk of serious injury, permanent disability, or even death from CCWs.
27. In this section, we outline States' obligations with respect to pre-deployment, deployment, and post-deployment of CCWs in order to minimise the risk created by these weapons for occasions when they are deployed. They follow from the obligations to protect health and limit injuries, and ensure the full exercise of free expression and assembly.

a. Core principles

28. The use of CCWs in protests should be an absolute last resort when dealing with genuine and imminent threats to safety. CCWs should only be used after all other means have been exhausted. The mere fact that an assembly may be considered unlawful under domestic law does not justify dispersing the assembly or the use of CCWs.
29. Where there are people in the context of protests who either engage in or incite others to engage in acts of violence which require police intervention, the explicit goal of any intervention should be to de-escalate the situation and, where needed, focus on targeted interventions that do not infringe upon the rights of peaceful protesters.
30. If CCWs are deployed in the context of protests, their use should always be based on the principles of legality, precaution, necessity, proportionality, non-discrimination, and accountability. The use of CCWs must be tested against the genuine threat faced and the legitimate aim pursued. Where any of these principles cannot be satisfied, CCWs should not be deployed.
31. States must investigate any injuries or deaths related to the use of CCWs to ensure accountability and to better train and educate law enforcement officials on the lethal and harmful effects of CCWs.

b. Patterns of risk

32. In addition to the core principles, certain patterns of risk in the use of CCWs in protests have emerged in our research.
33. The erroneous presumption that CCWs are non-lethal has several consequences: (1) that law enforcement and security personnel are not always trained in the proper use of such weapons; (2) that they are subject to fewer controls and regulations; (3) that they resort quickly to their use without trying other de-escalation techniques first or exhausting all other means before using CCWs; and (4) that the cases of injury and death from their use are then not properly investigated.

34. The capacity of CCWs to achieve the goal of safe crowd dispersal is limited. The infliction of pain and incapacitation occasioned by CCWs is unlikely to result in the safe dispersal of protesters. On the contrary, the use of CCWs for crowd dispersal is often counterproductive, as they can cause confusion and panic, resulting in additional injuries as well as an escalation of violence.
35. CCWs are intentionally misused as weapons for political repression rather than for legitimate crowd-control purposes.

c. Pre-deployment of CCWs: Design and trade

36. CCWs and/or policing equipment that can be used as a CCW, intended for use in the context of protests, must be designed and produced to ensure that they meet legitimate law enforcement objectives and comply with international law and standards. This duty applies to states and their agents as well as to companies that manufacture weapons for law enforcement as recognised in the UN Guiding Principles on Business and Human Rights.
37. Weapons designed for military purposes are inappropriate for use in protests unless they have been adapted for crowd-control purposes and independently tested for appropriateness and effectiveness. Weapons' design should not be altered or modified to produce lasting and painful effects as a means of punishment.
38. Public and private manufacturers of CCWs and related equipment should make publicly available an assessment of specific weapons' risks to law enforcement institutions, their officials, and the public. States, law enforcement agencies, and manufacturers should make freely accessible the technical specifications of weapons in use.
39. All safety data information and any other relevant information should be provided by manufacturers and should be made publicly accessible. Publicly available data should include each weapon's design features and parameters with a view to facilitating medical treatment and public knowledge of potential hazards. Manufacturers should also periodically publish updated medical studies regarding the safety of their weapons, along with the names of experts who have contributed to safety analyses, indicating the sources of funding or compensation.

d. Pre-deployment of CCWs: Testing and legal review

40. Testing of new and existing CCWs should not rest solely in the hands of manufacturers. States should ensure that CCWs are subject to rigorous independent testing prior to making procurement decisions. Testing, evaluation and approval should include a multidisciplinary approach that, in addition to law enforcement, includes technical specialists, academics, policymakers, health professionals, and civil society and consultation with communities that might be most impacted by the deployment of these weapons.
41. Testing of CCWs should consider legality, level of target accuracy and precision, risk of lethality, risk of severe injury or disability, level of pain inflicted, lifespan, reliability (i.e., minimal risk of malfunction), human factors that may affect their intended use, and any other relevant factors.

42. Testing to determine safe environmental parameters for the use of CCWs should occur in conditions that are similar to protest situations and under varied scenarios. The following factors, among others, should be considered: distance of engagement, urban or rural environment, expected weather conditions, nature of space (e.g., enclosed v open), possible collateral effects, and participant demographics.
43. The testing process should inform domestic regulations and guidelines for the lawful use of CCWs. The results from the testing should be made publicly available.
44. Newly acquired weapons should be subject to a pilot program to allow for evaluation and assessment.
45. A legal review should be conducted prior to procurement of a CCW. This review should be conducted to determine whether the procurement and use of a CCW would, in some or all circumstances, be prohibited by any rule of international or domestic law, in particular, human rights law. As part of the legal review, testing must:
 - be conducted independently of the manufacturer and account for both the required and the potential capabilities and effects of the CCW;
 - evaluate the effects of all reasonably, likely, or expected uses of the CCW;
 - be based on impartial legal, technical, medical, and scientific expertise and evidence; and
 - consider the potential effects of use on individuals who may be especially vulnerable, including pregnant persons.

e. Regulations, training and planning

46. Regulations, procedures, and/or protocols on the use of CCWs should be developed for law enforcement based on applicable domestic, regional and international laws. Human rights treaty obligations and international standards should be observed and operationalized in the protocols. These protocols should also reflect the findings from independent testing. Law enforcement should never rely solely on manufacturers' instructions when defining protocols on acceptable use.
47. Regulations, procedures, and/or protocols on the use of CCWs should be publicly accessible and include details of (1) when and how weapons may be used; (2) training requirements; (3) the risks associated with the use of these weapons, both individually and in crowd-control situations, including specific reference to vulnerable populations; and (4) accountability measures.
48. Law enforcement should be trained in the human rights-compliant use of CCWs. In addition to teaching the technical aspects of the weapon and its use, training should be contextual, including addressing the specific aspects and challenges of managing protests.
49. Training should be continuous and ongoing and should include simulations and exercises that review past cases to identify inappropriate or unlawful weapon use and consider alternative approaches. It must include information about the medical and health effects and risks of using particular CCWs, and precautions that should be taken in using particular weapons.
50. Training of projectile weapons should mirror that of formal firearms training, with emphasis placed on the recognition of unsafe firing conditions. Training should include

the determination of safe firing distances, given the importance of distance in attenuating the effects of impact projectiles. Law enforcement officials who have not received the appropriate training (as described above) should not be permitted to carry or use CCWs.

51. Pre-deployment planning should always consider contextual factors, including the nature of the area where the protest is occurring, whether the protest is static or mobile, the weather conditions, access to exits, and the size and demographics of the crowd, among other factors.
52. Pre-deployment planning should also have clearly designated command roles and authorities. Authorization should come from a senior-level officer on the scene, who is able to assess the conditions where CCWs may be used and is responsible for the manner and scope of their deployment.

f. Use of force and deployment of CCWs

53. The use of any kind of force, including CCWs, must always comply with the principles of necessity, proportionality, legality, precaution, non-discrimination, and accountability.
54. In exceptional circumstances and where there is an imminent and actual threat, law enforcement officials may only use the minimum force necessary to address the threat and, if possible, should take all reasonable measures to engage in de-escalation techniques.
55. Law enforcement officials should be aware that even the display of CCWs may escalate tensions and increase the potential for violent conflict during protests. Where force is proportionate and is necessary to achieve a legitimate law enforcement objective, all possible precautionary steps must be taken to avoid, or at least minimise, the risk of injury or death.
56. When a decision is made to use force in response to acts of violence, law enforcement officials should not treat crowds as a single violent entity because of the actions of some individuals. Law enforcement officials must make every effort to identify and isolate violent individuals without unnecessarily interfering with the rights of other protesters. If it is decided that CCWs are an appropriate means of stopping individual acts of violence, the final decision to use CCWs must account for the likely proximity of third parties and bystanders.
57. Law enforcement officials should avoid the use of CCWs towards those who are particularly vulnerable to the harmful consequences of the use of force in general and to the effects of specific CCWs, including children, pregnant persons, older persons, persons with disabilities, and persons with mental health conditions and impairments.
58. CCWs should not be used without first clear verbally warning protesters and giving them adequate and appropriate opportunity to comply with a lawful order to exit and/or find safe shelter.

g. Kinetic impact projectiles specifically

59. Medical evidence is that KIPs should never be fired indiscriminately into groups and must be expressly prohibited for the sole purpose of crowd dispersal; they cannot be used effectively and safely in groups of people. KIPs must never be fired at close range and

should never be targeted at the head or other vital areas of the body, where impact typically causes serious injury and, in some instances, death.

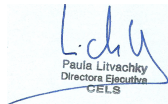
- 60. Any KIP that fires multiple projectiles is inherently indiscriminate and must be prohibited in the context of protests. It is not possible to deploy these weapons safely against crowds or individuals.
- 61. Pellet rounds, which fire multiple projectiles that follow uncontrollable trajectories, are both indiscriminate and dangerous. Their frequently small size and high velocity render them exceptionally hazardous. As a result, pellet rounds (birdshot, buckshot, and multiple projectile munitions) must be expressly prohibited in all protest settings; metallic pellets may never be categorised as a CCW.
- 62. KIPs that have a metal component as part of their composition, especially those with metal cores, are not safe for crowd management and should be expressly prohibited. These weapons, including rubber-coated metal rounds, lead pellets, small calibre rifle or pistol rounds, and bean bag rounds, impact targets with excessive energy and high velocities and have a very high potential to cause serious injury and death.

Respectfully submitted,
This 16th of December 2024



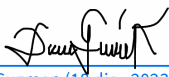
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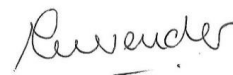
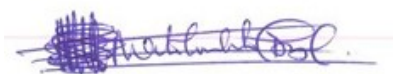
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