



Physicians for
Human Rights

WRITTEN SUBMISSION FOR INTERIM REPORT BY THE U.N. SPECIAL RAPPORTEUR ON TORTURE TO BE PRESENTED AT THE 78TH SESSION OF THE U.N. GENERAL ASSEMBLY BY THE INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANISATIONS (INCLO) AND PHYSICIANS FOR HUMAN RIGHTS (PHR)

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A. INTRODUCTION

1. This written contribution is submitted to the United Nations Special Rapporteur on Torture (“UNSR”) by the [International Network of Civil Liberties Organisations](#) (“INCLO”)¹ and [Physicians for Human Rights](#) (“PHR”) in response to the call for inputs for the thematic report by the UNSR to be presented at the 78th General Assembly. The report will focus on the nature, scope and regulation of the production and trade of law enforcement equipment and weapons and the relationship with torture and other cruel, inhuman, or degrading treatment or punishment.
2. The responses included in this written input are based on monitoring, research and advocacy efforts led by INCLO members and medical experts and staff of PHR. They draw in particular from the March 2023 report [Lethal in Disguise 2: How Crowd-Control Weapons Impact Health and Human Rights](#), co-published by both organizations in collaboration with Omega Research Foundation, and the open-source investigation by PHR, [Shot in the Head](#). According to that multi-year, multi-country study, around 120,000 people around the world have suffered serious harm since 2015 as a result of the abuse and misuse of crowd-control weapons (CCWs). Given the areas of expertise of both organizations, the contributions included here case studies from a broad range of countries where crowd-control weapons (CCWs) used by law enforcement in the context of protests have resulted in serious injuries or deaths.
3. INCLO and PHR believe that these are critical examples to consider when working towards better regulations of the manufacturing, transparency in the design, composition, and testing, regulation of trade and use, to the promotion of much needed reporting of all use of CCWs and seeking accountability for their misuse. Through them, we have perceived the following patterns of risk:
 - a. First, the development of new CCWs and aggressive marketing by arms companies to policing institutions is, in some cases, driving demand. Not all of these newer weapons are adequately tested, and some have been specifically developed for military purposes. The marketing, trade and use of such weapons in the absence of demonstrated data on safety and effectiveness illustrates the problem of the unregulated proliferation of CCWs.

¹ INCLO’s 15 member organisations are: Agora International Human Rights Group (Agora, Russia), the American Civil Liberties Union (ACLU, United States), the Association for Civil Rights in Israel (ACRI, Israel), the Canadian Civil Liberties Association (CCLA, Canada), Centro de Estudios Legales y Sociales (CELS, Argentina), the Commission for the Disappearances and Victims of Violence (KontraS, Indonesia), Center for the Study of Law, Justice and Society (Dejusticia, Colombia), the Egyptian Initiative for Personal Rights (EIPR, Egypt), the Human Rights Law Centre (HRLC, Australia), the Human Rights Law Network (HRLN, India), the Hungarian Civil Liberties Union (HCLU, Hungary), the Irish Council for Civil Liberties (ICCL, Ireland), the Kenya Human Rights Commission (KHRC, Kenya), the Legal Resources Centre (LRC, South Africa), and Liberty (United Kingdom).

- b. Second, the presumption that CCWs are non-lethal has several consequences: first, that police and security personnel are not always trained in their proper use; second, that they are subject to fewer controls and regulations than weapons recognized as lethal; third, that law enforcement officers resort quickly to their use without trying other de-escalation techniques first or exhausting all other means; and fourth, that the cases of injury and death from their use are then not properly investigated.
 - c. Third, some of the CCWs that are used in the management of protests are inherently inaccurate and indiscriminate in their effects, risking serious injury and death to the people targeted, other demonstrators, bystanders, and law enforcement officers themselves. We believe that these weapons should be prohibited.
 - d. Fourth, 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 the escalation of violence. In some instances, CCWs seem to be misused intentionally as weapons for political repression and as forms of collective punishments against protesters.
4. These trends on the use and misuse of CCWs present all over the world weaken the right to peaceful assembly, have a chilling effect on civil society, in particular for human rights defenders, social leaders and historically marginalised groups, and can constitute an act of torture or ill-treatment when used as a way of indiscriminate, collective punishment or can cause long-term mental or physical pain. Countries where CCWs are not regularly used in domestic law enforcement, remain important actors to engage as they in many instances house important crowd control tools and weapons manufacturing companies and make significant financial gains from their trade.
5. For these reasons, we believe that to address the many extrajurisdictional intricacies of the manufacture, trade, and use of these weapons and to ensure all States remain accountable for their human rights commitments inside and outside their borders, an international legally binding framework is urgently needed. We join the coalition of human rights and civil liberties organizations calling for States to develop, ratify and implement a Torture-Free Trade Treaty.

B. ABOUT INCLO

6. INCLO is a network of 15 independent, national human rights organisations from different countries in the North and South that work together to promote fundamental rights and freedoms by supporting and mutually reinforcing the work of member organisations in their respective countries and collaborating on a bilateral and multilateral basis. Each organization is multi-issue, multi constituency, domestic in focus and independent of

government, and advocates on behalf of all people in its country through a mix of litigation, legislative campaigning, public education, and grassroots advocacy.

7. INCLO works on four thematic issues: (1) protest rights and policing; (2) surveillance and human rights; (3) religious freedom and equal treatment; and (4) protecting civic space. Police brutality and discrimination and protest rights are priority issues for INCLO to work on. INCLO members have partnered to advocate against government and police repression of protests and human rights activism. INCLO also seeks to promote and protect the right to protest by combining technical work – compilation of standards and analysis – with the creation of material intended for a wider audience.

C. ABOUT PHR

8. For over 30 years, Physicians for Human Rights (PHR) has used science and medicine to document and call attention to mass atrocities and severe human rights violations. PHR is a global organization founded on the idea that health professionals, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to stop human rights violations. PHR's investigations and expertise are used to advocate for the protection of persecuted health workers, prevent torture, document mass atrocities, and hold those who violate human rights accountable.
9. Through direct examination of victims, desk research and scientific evaluation of weaponry and its potential consequences (when used both appropriately and inappropriately), PHR has brought relevant information to advocates and policymakers seeking to curtail responses by police and security forces that not only suppress lawful dissent, but also harm human health.

D. RESPONSES TO THE U.N. SPECIAL RAPPORTEUR ON TORTURE'S CALL FOR INTERIM REPORT TO BE PRESENTED AT THE 78TH SESSION OF THE U.N. GENERAL ASSEMBLY

Introduction

10. Law enforcement and security forces frequently respond to protests with excessive force and violence that fundamentally undermine the rights to free expression and assembly. Such uses of force often involve CCWs, weapons ostensibly designed to inflict sublethal pain on individuals. The rising popularity of CCWs by state actors highlights alarming trends in policing across the world: growing authoritarianism, the militarization of law enforcement, unregulated and precipitous use of weapons against peaceful, unarmed people, politically biased decisions to use force, little transparency around when, how and why CCWs are used and no meaningful accountability. The result is thousands of people worldwide who have been seriously injured or killed by these weapons, been subject to forms of collective

punishment, degrading and inhuman treatment, and suffer long-term physical and mental repercussions.

11. The global use of CCWs by government-controlled security forces on protesters has severe consequences to the physical health of both those targeted and bystanders not targeted, on the mental health of everyone involved, and on the enjoyment and safe exercise of fundamental civil and political rights. Too often, the use of force and CCWs are used in violation of local, state, and international protocols, resulting in disproportionate and excessive use. Nearly all weapons can and are frequently used as indiscriminate tools of collective punishment against peaceful protesters, bystanders, and disruptors alike, regardless of their vulnerabilities, actions or potential for causing harm. Some are inherently unlawful, just because they are indiscriminate.
12. Police violence is also frequently discriminatory and biased against marginalised groups, including racial, ethnic, political, religious, and other minorities, who too often face disproportionate deployments of force and weapons during protests.

Inherently dangerous and indiscriminate CCWs that should be prohibited

13. Kinetic impact projectiles (KIPs) are CCWs we have documented to cause serious injuries, permanent disability, and death. Severe injuries are more likely when KIPs are fired at close range. When launched from afar, these weapons are often inaccurate and can strike vulnerable body parts or bystanders. Therefore, the medical evidence in this report underscores that KIPs should never be fired indiscriminately into groups and are, in general, an inappropriate weapon in any protest context.
14. In particular, we believe that KIPs should be expressly prohibited when:
 - a. They are used for the sole purpose of crowd dispersal; they cannot be used effectively and safely in groups of people.
 - b. They fire multiple projectiles, as they are inherently indiscriminate.²
 - c. They 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.

Inherently inaccurate “double-ball rounds” in South Africa

15. An example of the inherently indiscriminate and inaccurate nature of CCWs can be seen in the South African Police Service (SAPS)’s use of “double-ball rounds”, more commonly known by the generic name “rubber bullets”. They consist of double-ball rounds containing two hard rubber balls fired from a shotgun. Manufactured by a number of companies,

² UN Guidance on LLWs above n 6 at para 6.3.2.

around the world and in South Africa, the use of these inherently inaccurate weapons in policing protests and public gatherings have changed the lives of many people in South Africa, both through tragic deaths and injuries.

16. On 19 March 2018, Thembekile Fana, a 61-year-old man, died during a protest in the Eastern Cape after being shot by police.³ According to a witness on the scene, Fana, who had been running for cover from police, stopped and raised his arms in surrender before being lethally wounded by double-ball rounds fired from a police shotgun.⁴ Fana's son, Andile, noted that he saw 16 shell casings lying around his father's lifeless body.⁵ He further noted that Fana was shot under the arm—further evidence of his surrender⁶ in the wake of impending death by CCW.⁷ Research conducted in the wake of this tragedy found that the death of Thembekile Fana appears to have been linked to the use of double-ball rounds at close range.⁸
17. On 10 March 2021, Mthokozisi Ntumba, a 35-year-old civil servant, was shot and killed by police using double-ball rounds as he was leaving a medical clinic in Johannesburg city centre during protests.⁹ Ntumba was leaving his doctor's rooms, when he caught himself in the crossfire of running protests over historical debt between police and students.¹⁰ It was also reported that three students, who were waiting outside the Johannesburg Institute of Engineering and Technology College, were also shot and injured by police using double-ball rounds that day.¹¹ According to a CCTV video of the alleged incident, police violently pursued a group of people standing on a sidewalk and can be clearly seen firing their shotguns indiscriminately as people flee for safety.¹² Four Johannesburg Metropolitan Police Department (JMPD) officers were subsequently arrested and charged with one count of

³ D Bruce, "Rubber bullets well past their sell-by date", Mail & Guardian. (6 December 2019), accessible at: <https://mg.co.za/article/2019-12-06-00-rubber-bullets-well-past-their-sell-by-date/>.

⁴ DispatchLive, "Protester 'killed by cops'", (20 March 2018) at: <https://www.dispatchlive.co.za/news/2018-03-20-protester-killed-by-cops/>.

⁵ *Id.*

⁶ Another prominent case of an individual shot while raising their arms and surrendering to law enforcement was the case of actor Patrick Shai who was shot eleven times in 2019, including in the neck, back, and arms by police using rubber bullets. Mr Shai had been seeking to intervene between police and protesters. See: <https://www.timeslive.co.za/news/south-africa/2019-11-11-actor-patrick-shai-shot-11-times-by-cops-during-soweto-protest-over-disconnected-electricity/>.

⁷ *Id.*

⁸ D Bruce, "Rubber bullets are high risk when used at close range", Polity, (2019).

⁹ U Nkanjeni, "Mthokozisi Ntumba: Know the man who was killed in the Wits protest crossfire", Times Live, (12 March 2021), available at: <https://www.timeslive.co.za/news/south-africa/2021-03-12-mthokozisi-ntumba-know-the-man-who-was-killed-in-the-wits-protest-crossfire/>.

¹⁰ B Wicks, "SERI wants answers after acquittal of cops accused of Mthokozisi Ntumba's murder" Eyewitness News, (8 July 2022), accessible at: <https://ewn.co.za/0001/01/01/seri-wants-answers-after-acquittal-of-cops-accused-of-mthokozisi-ntumba-s-murder>.

¹¹ J Chabalala, "Cops accused of killing Mthokozisi Ntumba amid student protest want case thrown out", News24. (4 July 2022), accessible at: <https://www.news24.com/news24/southafrica/news/cops-accused-of-killing-mthokozisi-ntumba-amid-student-protest-want-case-thrown-out-20220704>.

¹² SERI, "The excessive use of force: We demand accountability for Mthokozisi Ntumba", (7 July 2022), accessible at: <http://www.seri-sa.org/index.php/latest-news/1235-press-statement-the-excessive-use-of-force-we-demand-accountability-for-mthokozisi-ntumba-7-july-2022>.

murder and three counts of attempted murder.¹³ During Ntumba’s post-mortem, a ballistics expert “confirmed that the deceased was shot by a rubber bullet at close range.”¹⁴

18. Siphesihle Mtsweni, 21, then a student at the Johannesburg Institute of Engineering and Technology was also shot by police using double-ball rounds during the protest that day. Mtsweni, who sustained injuries from the double-bullet rounds to the face, said he dropped out of college later that year due to trauma following the shooting incident.¹⁵ “When I would go back to the college, I was reminded of what happened when I was shot. I am reminded of the dead body I saw,” said Mtsweni.¹⁶
19. Double-ball rounds are a particularly dangerous type of kinetic impact projectile. Owing to their design, cartridges that contain multiple projectiles are inaccurate. Once fired, the projectiles separate, and can rapidly disperse, resulting in unpredictable impacts. This inaccuracy only increases over longer distances. As a result of this design, projectiles from double-ball rounds may impact unintended parts of the body, including the head, face or neck, which could cause serious injury. Despite their inherently inaccurate nature, the use of different types of rubber bullets continues to be a key part of police responses to protests and other public gatherings in South Africa.
20. Double- and triple ball rounds are manufactured and procured by a wide range of companies. Many of the double-ball rounds used in South Africa are manufactured in South Africa, but there are companies manufacturing double- and triple-ball rounds across the world. Among these are believed to be: the Spanish company, Trust Eibarres SA, manufactures both double- and triple-ball rounds for law enforcement;¹⁷ the Turkish company, ZSR,¹⁸ the Czech company, Sellier & Bellot,¹⁹ the Brazilian company, Condor,²⁰ and the US-based company, Defense Technology, makes a ‘Multiple Rubber Baton Round’ with three projectiles.²¹
21. Several companies within South Africa manufacture a range of kinetic impact projectiles – including the double-ball round. The most notable historical South African manufacturer of kinetic impact projectiles was Swartklip Products, which became a Denel (now Rheinmetall

¹³ See above 50.

¹⁴ *Id.*

¹⁵ M Koka, “Former student testifies about being shot on day Mthokozisi Ntumba was killed”, Sowetan Live. (10 February 2022), accessible at: <https://www.sowetanlive.co.za/news/south-africa/2022-02-10-former-student-testifies-about-being-shot-on-day-mthokozisi-ntumba-was-killed/>.

¹⁶ *Id.*

¹⁷ Trust Eibarres SA, “Law Enforcement”, available at: <https://www.cartuchostrust.com/en/cartridges/law-enforcement/>.

¹⁸ ZSR Patlayıcı Sanayi A.Ş, “Traumatic”, accessed at <https://zsrpatlayici.com/traumatic-en>.

¹⁹ Sellier & Bellot, “Law enforcement products: 12/67.5 rubber ball”, accessible at: <https://www.sellier-bellot.cz/en/products/law-enforcement-products/12-67-5-rubber-ball/list/>.

²⁰ Condor Tecnologias Nãa-Letais, “AM-403/A TRIMPACT – TRÊS PROJÉTIS DE BORRACHA”, accessible at: <https://www.condornaoletal.com.br/am-403-a/>.

²¹ Defense Technology, “Multiple Rubber Baton Round 40mm”, accessible at: <https://www.defense-technology.com/product/multiple-rubber-baton-round-40mm/>.

Denel) subsidiary during the 1990s. Another manufacturer is Industrial Cartridge, that currently markets '2 ball baton' and '3 ball baton' 12-gauge ammunition among its 'Law Enforcement Shotshells' range²² and that reported to have seen "high demand for less lethal ammunition for crowd control, with orders from South African entities taking up much of its production capacity" in 2019.²³

22. Civil society actors in South Africa have repeatedly criticised the nature of the use of these kinetic impact projectiles within South Africa.²⁴ Despite this, police forces continue to procure new stocks of double-ball rounds. The lack of transparency and clear global standards regarding the manufacture of these weapons around the world, their testing before purchase by governments and their procurement²⁵ creates immense challenges for organizations seeking to monitor abuses related to these weapons and the fight for justice by victims and their families.

Man killed by ESMAD with bean bag shot in Colombia

23. Another example showcasing the inherent dangers of weapons with multiple projectiles and the challenges to ensure accountability when they are used by law enforcement to commit human rights violations, is illustrated by the death of Dilan Cruz, an 18-year-old, who was participating in demonstrations in the centre of Bogota. On 23 November 2019, ESMAD (*Escuadrón Móvil Antidisturbios*), the police unit responsible for crowd and riot management, began to throw tear gas and stun grenades to disperse the demonstrators. In videos, Cruz can be seen picking up a grenade, throwing it back at the agents and, within seconds, being hit in the back of the head by a flying object. The projectile that hit him was a bean bag, fired by Captain Manuel Cubillos Rodríguez from a 12-gauge shotgun, which is one of the CCWs authorised for police use under Colombian law.

24. Dilan Cruz died two days after the incident, while in intensive care.²⁶ The National Institute of Legal Medicine and Forensic Sciences confirmed in his autopsy that the cause of death was "secondary to penetrating cranioencephalic trauma, caused by low impact ammunition,

²² Industrial Cartridge SA, Less Lethal Ammunition – 12 Gauge. Law Enforcement Shotshells, accessible at: <https://industrialcartridgesa.com/less-lethal-ammunition/>.

²³ defenceWeb, "High demand for less lethal rounds", (6 December 2019), accessible at: <https://www.defenceweb.co.za/featured/high-demand-for-less-lethal-rounds/>.

²⁴ See, for example, M Rayner, L Baldwin-Ragaven, with S Naidoo, "A Double Harm: Police misuse of force and barriers to necessary Health Care Services", Socio-Economic Rights Institute of South Africa and D Bruce, "Rubber bullets are high risk when used at close range", ISS Today (28 November 2018), accessible at: <https://issafrica.org/iss-today/rubber-bullets-are-high-risk-when-used-at-close-range>.

²⁵ In the case of the IT Empowerment Technologies' successful bid, it was alleged that the SAPS "paid five times what they should have for less lethal ammunition" and a whistleblower, Colonel (ret.) David Peddle, alleged that "the ammunition was not tested to the latest SAPS specifications before the bid was approved". See defenceWeb, "Concern over 'inflated' SAPS rubber bullet tender", (2 September 2020), accessible at: <https://www.defenceweb.co.za/industry/industry-industry/concern-over-inflated-saps-rubber-bullet-tender/>.

²⁶ D Cruz, Colombian teenager injured by police projectile, dies, BBC News, (26 November 2019), accessible at: <https://www.bbc.com/news/world-latin-america-50557496>.

which causes severe and irreversible damage to the brain.”²⁷ That is to say, he was killed by the impact of the bean bag ammunition, which complied with the manufacturer's technical data sheet and had not been modified. His death fuelled further protests, including demands for the end of police violence and the end of impunity for deadly police conduct.

25. Cruz's death was followed by almost two years of disagreement regarding whether the ordinary justice system or the military criminal justice system had the authority to investigate and criminally prosecute the ESMAD agent. The Constitutional Court, the highest court in Colombia on constitutional matters, ruled that the investigation should continue in the ordinary justice system. In December 2021, the agent was required to attend a disciplinary trial by the *Procuraduría General de la Nación* (the national prosecutor's office), which is in charge of investigating and sanctioning public officials for actions taken in their official capacity.²⁸ According to the prosecutor's office, “The investigated officer did not take the necessary care when activating the shotgun he was carrying, since regardless of whether the weapon is listed among the least lethal weapons, it will always affect the integrity of the people.”²⁹ Despite this finding, to date there has been no decision on the merits of the case.
26. In December 2019, days after Cruz's death, civil society organisations and concerned individuals filed a legal action seeking protection of the fundamental right to protest. In September 2020, the Supreme Court of Justice finally issued a ruling³⁰ protecting the right of all persons to protest and clarifying the duty of authorities to “avoid, prevent and sanction the systematic, violent and arbitrary intervention of the public forces in demonstrations and protests.” The court's ruling suspended the use of 12-gauge shotguns, the weapon used to shoot the bean bags, by ESMAD. The suspension continues to this day, and the Ombudsman's Office of Colombia is obliged to monitor compliance with this order.
27. Of particular concern is that physical and mental harms caused by crowd-control weapons causes long-lasting, cascading psychosocial impacts. According to a report (pp. 64-67) by MOCAO, a collective of survivors of eye injuries from Colombia, eye injuries cause a rupture in the victims' life plans, affecting their ability to support themselves and their families emotionally and economically and thus affecting the nuclear family and community. Loss of vision from one or both eyes from CCWs leads to a deterioration of their professional or academic functioning (many victims are/were students). It is critical to establish standards for reparations and specific support for ongoing trauma and disabilities caused by CCWs.

²⁷ Medicina Legal confirmó que Dylan murió por disparo del ESMAD. El Tiempo, (28 November 2019), accessible at <https://www.eltiempo.com/justicia/investigacion/dylan-cruz-medicina-legal-confirmo-que-el-joven-murio-por-el-disparo-del-esmad-438524>.

²⁸ Capitán del ESMAD fue citado a juicio disciplinario por muerte de Dylan Cruz, Revista Semana, (10 December 2021), accessible at: <https://www.semana.com/nacion/articulo/capitan-del-esmad-fue-citado-a-juicio-disciplinario-por-muerte-de-dylan-cruz/202115/>.

²⁹ Procuraduría General de la Nación, Procuraduría formuló cargos a capitán de la Policía Nacional por la muerte de Dylan Cruz, (10 December 2021), accessible at: <https://www.procuraduria.gov.co/portal/PROCURADURIA-FORMULO-CARGOS-A-CAPITAN-DE-LA-POLICIA-NACIONAL-POR-LA-MUERTE-DE-DILAN-CRUZ.news>

³⁰ See <https://www.dejusticia.org/en/supreme-court-of-justice-protects-the-right-to-protest-against-police-violence/>.

28. The report also argues (pp. 55-58) that ocular injuries perpetrated by law enforcement due to excessive, arbitrary and undue use of force constitute torture or cruel, inhuman and degrading treatment. They point out ways that ESMAD police use CCWs that seems to maximize the damages the weapons can produce, prolonging pain and suffering. When these traumas are not recognized as torture or ill-treatment, they are more likely to be judged in the military justice system rather than the ordinary justice system, making it difficult to have a robust human rights-based decision.

CCWs and tools that require stronger regulations and better accountability mechanisms

29. Chemical irritants include a variety of chemical compounds intended to produce sensory irritation and pain. Conventionally referred to as “tear gas” or “riot control agents,” chemical irritants have been historically categorised as non-lethal or less lethal, the general perception is that the weapon does not cause permanent injury or death but instead has mostly short-term effects is now being challenged, with more evidence of associated longer-term and even permanent injuries as well as deaths.

Tear gas used by police causes panic in Kanjuruhan Stadium and 135 deaths in Indonesia

30. The tragic consequences of the misuse of these CCWs were starkly shown on 1 October 2022, the deadliest football tragedy of the 21st century unfolded at Kanjuruhan Stadium in Malang, Indonesia, after police shot tear gas in a packed stadium. As a result, 135 fans were crushed in the ensuing chaos, among which 40 children and over 500 supporters were injured.

31. That night, as the referee’s whistle sealed the game’s results, fans took to the pitch. Police immediately replied by shooting chemical irritants at the field and then at the stands. More than 40 rounds of tear gas, flash bangs and flares were shot at fans within ten minutes³¹, creating mass panic and a rush towards the scant and narrow exits. The gates were only wide enough for two persons to exit at a time, and some were locked.³²

32. These events were largely reported by local and foreign media. In the outcry following the tragedy, a multidisciplinary investigation was ordered by President Joko Widodo. The team, composed of government officials and football and security experts, concluded that the tear gas–prohibited in sports venues under Indonesian police protocol–was indeed the main cause of deaths. The Malang chief of police was dismissed and an investigation was opened on scores of police officers. In its 124-page report, the investigation team also asked for the resignation of the chairman and the executive board of PSSI, Indonesia’s football association.³³

³¹ See [How police action in Indonesia led to a deadly crush in the soccer stadium](#) (Facebook video).

³² See Guardian, *Indonesia to demolish football stadium where scores died in crowd crush* (19 October 2022), accessible at: <https://www.theguardian.com/world/2022/oct/19/indonesia-to-demolish-football-stadium-where-scores-died-in-crowd-crush>.

³³ CNN, *Police’s tear gas main cause of death in Indonesia soccer stampede: investigators*, accessible at: <https://edition.cnn.com/2022/10/14/asia/indonesia-stadium-disaster-tear-gas-investigation-intl-hnk/index.html>.

33. Indonesian human rights NGO and INCLO member Commission for Disappeared Persons and Victims of Violence (KontraS) took part in the Civil Society Coalition Fact-Finding Team which led a parallel independent inquiry³⁴ of the police intervention. They discovered another set of facts also pointing to the police's responsibility in the tragedy, but they also highlight the systematic nature of these human rights violations whose planning involved high-ranking officials who were not accountable under the government commissioned investigation. KontraS also discovered that witnesses had suffered intimidation on behalf of authorities after the events which are considered a means to deter survivors from telling their story.
34. Numerous witness accounts claim that authorities gave no verbal warning before shooting, first at the pitch and then at the stands. Firing chemical irritants into closed spaces or open spaces where there is no safe egress should be prohibited, as clearly stated in the 2020 UN Guidance on the Use of Less-Lethal Weapons in Law Enforcement³⁵ and reiterated by FIFA guidelines. On 18 October 2022, Indonesia announced its plans to demolish Kanjuruhan Stadium and rebuild another one compliant with FIFA regulations. At that point, six people, including police officers and organizers, were facing charges over the crush for criminal negligence and causing death, which carries a maximum sentence of five years.³⁶

Lethality of Gas Canisters in Ecuador and Peru

35. Further research on the medical impacts of chemical irritants has led to further documentation of blunt trauma from gas canisters, some which resulted in death. One case of this was the case of Byron Guatatuca, a member of the Kichwa community from San Jacinto, Puyo, a town in the Ecuadorian Amazon, who was killed in a police operation while participating in a peaceful demonstration that was part of a national indigenous strike called by the Confederation of Indigenous Nationalities of Ecuador. On the night of 21 June 2022, the Ecuadorian national police and military began to clear roads blocked by the demonstrators. Security forces fired tear gas canisters, causing panic and choking among the crowd, including elderly people, women, and children. A tear gas canister fired from close range hit Guatatuca in the face, fractured his skull, and entered his brain, causing his death. He was shot from the front and at a short range. The impact from the canister had a grave effect on the cerebral region, which produced a haemorrhage, loss of consciousness and, finally, his death.
36. The police issued a statement arguing that Guatatuca died from "handling an explosive device," an account that was later supported by the Ministry of the Interior. However, shortly thereafter, images of the CT scans performed on Guatatuca at the Puyo Regional Hospital were posted on social media, showing a tear gas canister lodged in his skull. This evidence

³⁴ KontraS, 12 Initial Findings of the Civil Society Coalition Fact-Finding Team Regarding the Human Rights Violation Incident at Kanjuruhan Stadium, accessible at: <https://kontras.org/en/2022/11/05/12-initial-findings-of-the-civil-society-coalition-fact-finding-team-regarding-the-human-rights-violation-incident-at-kanjuruhan-stadium/>.

³⁵ See UN Guidance on LLWs above n 6 at 29.

³⁶ BBC, *Kanjuruhan stadium: Indonesia to demolish site of arena disaster*, accessible at <https://www.bbc.com/news/world-asia-63301863>.

not only undermined the official account but showed that it was a deliberate falsification. The veracity of the medical studies was confirmed by the director of the Puyo Hospital.

37. The attack on Guatatuca represents an excessive and illegal use of force and led to a request for the State Attorney General's Office to open a criminal investigation. The Attorney General's Office of Pastaza Province involved more than 80 police officers in the preliminary investigation but has not yet made progress on key elements such as the list of officers who were carrying weapons capable of firing tear gas canisters. According to Jessika Delgado—the local lawyer who led the case alongside the Regional Human Rights Advisory Foundation (INREDH) —the attorney general's office seemed to be deliberately delaying the investigation. Guatatuca's case makes clear that tear gas canisters can cause serious injury and even death, depending on how they are fired. Accordingly, they require far greater regulation and scrutiny than they currently receive.
38. In another that took place in January 2023 in Peru, a passerby who was not even demonstrating, Victor Santisteban Yacsavilca, [died](#) as a result of a tear gas canister hitting him in the head from a short distance. Despite contradictory statements from the Ministry of Health and media channels, an autopsy [confirmed](#) that he had been hit by a canister and not a stone. In Lima, Pedro Cosi Condori and Udoc Dassio Antonio suffered [skull fractures](#) from tear gas canisters hitting their heads. They are among the 8 victims who were treated for this exact same type of injury in Peru's capital that day. Other demonstrators in the weeks prior also suffered severe injuries from other CCWs: Rosalino Flores Valverde is still hospitalized for injuries from [36 buckshots](#) that were lodged in his chest and abdomen after he was shot at his back at short range in the January protests in Cusco.
39. Awareness of the dangers of rubber bullets and tear gas canisters is rising, but there is still a long way to go. Although [research](#) we have conducted demonstrates that tear gas - the crowd control weapon most commonly used around the world and perceived to be among the least harmless - can cause severe pain, and suffocation, and long-term impacts such as chemical burns and vision loss. When the canisters end up being used as projectiles - as was the case with Yacsavilca - they become extraordinarily hazardous. Tear gas canisters are dense, metallic, large, often heated and can hit someone mid-explosion. They have been documented to cause permanent disabilities and deaths in Iraq, Syria, Chile, and Ecuador, among other countries.
40. The case of Victor Santisteban Yacsavilca highlights the international legal gap when there are no standards to limit the purchase of weapons by governments who are actively violating human rights like in the case of Peru against the largely peaceful nationwide demonstrations that began in early December 2022 after vice-president Dina Boluarte took office following the impeachment and arrest of Pedro Castillo. In addition to the little transparency that exists around the manufacture, testing, purchasing, and use of CCWs around the world, the fact that these weapons may be produced in one country, bought by

one country, then used in another, makes ensuring accountability for serious violations a huge [challenge](#).

41. Besides urgently ordering rubber bullets, tear gas grenades and cartridges from multiple national [manufacturers](#), the Peruvian government requested that Ecuador [return](#) over 12,000 tear gas canisters that Peruvian authorities gave to Ecuador to respond to its own unrest in 2022. On January 12, 2023. Peru also received almost 30,000 additional tear gas munitions from the [Brazilian](#) manufacturer Cónдор. These efforts by the Peruvian government and law enforcement to procure more CCWs during an already volatile situation demonstrates their unwillingness to adhere to their human rights commitments and find ways to deescalate and facilitate dialogue.

Venom launcher, a dangerous new technology used by police during 2021 social protests in Colombia

42. A worrisome trend in weapons research and development is “area-effect” stun grenades and delivery systems designed to project multiple bomblets across great distances. Among these delivery systems is the Venom, a multi-tube grenade launcher which is either mobile (mounted on a vehicle) or static (placed on the ground). The Venom system includes up to 30 tubes (smaller models are available) that can fire different kinds of grenades or canisters. The tubes on the launcher are fixed, which means that while the system can generally be aimed in a particular direction, the angle of elevation cannot be altered. Law enforcement was documented placing the Venom system on the ground, holding it by hand, and firing directly at protesters, rather than overhead.³⁷ Such use would be expected to cause movement of the launcher on firing, resulting in poor aiming or flat and direct firing trajectory.
43. The Venom is an inaccurate weapon which fires numerous canisters at the same time or successively in different directions. In addition, the canisters are fired at high velocity to long distances which turns the canisters into kinetic impact projectiles. These features turn the Venom into a dangerous weapon that can never comply with the principles of legality, precaution and proportionality. Some weapons have no place in the policing of protests – the Venom launcher is one such weapon.
44. As of mid-June, NGOs Temblores, Indepaz, and PAIIS reported that they had recorded 28 instances where the Venom system had been used against protesters in Colombia. In one instance of use of the Venom system in Bogotá, it was reported that “At least 20 detonations were counted in less than 10 seconds”. Newspaper El Espectador reported multiple uses of the Venom system, firing both stun grenades and tear gas, towards protesters in Bogotá. The

³⁷ Temblores, Indepaz, and PAIIS 2021. ‘Informe de Temblores, Indepaz y Paiis a la CIDH sobre las violaciones a los derechos humanos cometidas por la fuerza pública contra la población civil colombiana en el marco del Paro’. Equipa Nizkor. June 2021. Accessed 7 December 2021. Available at: <http://www.derechos.org/nizkor/////colombia/doc/duque54.html#disparos>.

use was described as “flashes and sparks (like missiles), then thunderous explosions, ending in a rain of tear gas that filled the streets,” “heavy artillery”, “indiscriminate.”³⁸

45. On May 14, 2021, 23-year-old Sebastián Quintero Muñera was killed during protests in Popayán allegedly by a projectile fired from the Venom. At the time of Mr Muñera’s death, Venom was being used by security forces on the streets of Colombian cities to disperse protesters. Its use was suspended by an administrative judge in Popayán in June 2021, although only in this city. The suspension is to be maintained until a protocol for its use is developed because although the Venom system is considered to be a type of less lethal weapon, “the way it is being used, can make it lethal.”
46. Following Mr Muñera’s death, the IACHR called on the Colombian state to respect life and human rights, and warned against security forces’ indiscriminate use of less-lethal weapons, particularly noting “anti-riot weapons – like the Venom rocket launcher – that have an indiscriminate impact on mostly peaceful protests.”³⁹ However, there is no evidence that the Venom system has been permanently retired from its use in Colombian policing.
47. The Venom system is a useful example to understand the need for a binding instrument that can address the international nature of the development and trade of weapons and tools used in crowd management. Developed by Combined Systems, Inc. (CSI), a US-based company, the Venom was initially created for use by the United States Marine Corps, but not used by them. It has also been used for more than a decade by the Israeli army in the West Bank.⁴⁰ In Colombia, Combined Systems, Inc. is documented to have supplied a range of munitions to the Colombian ‘riot control’ agency, ESMAD (Escuadrón Móvil Antidisturbios [Mobile Anti-Disturbance Squadron]).⁴¹ The Venom system reportedly cost the Colombian

³⁸ El Espectador. 2021. ‘Venom: el arma en la tanqueta del Esmad, que causó pánico en el sur de Bogotá, en el Paro Nacional’. 5 May 2021. Accessed 6 December 2021. Available at : <https://www.elespectador.com/bogota/Venom-el-arma-en-la-tanqueta-del-esmad-que-causo-panico-en-el-sur-de-bogota-en-el-paro-nacional-article/>.

³⁹ Organization of American States. 2021. IACHR Condemns Serious Human Rights Violations in the Protest Context in Colombia, Rejects All Forms of Violence, and Stresses that the State Must Comply with its International Obligations. Press Release 2021 – 137. 25 May 2021. Accessed 4 February 2022. Available at: http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/137.asp.

⁴⁰ B’Tselem, Crowd Control: Israel’s Use of Crowd Control Weapons in the West Bank, p.13, January 2013. Available at: https://www.btselem.org/download/201212_crowd_control_eng.pdf

⁴¹ For more information on this relationship and the weapons and equipment in question, see Omega Research Foundation. 2016. *Tools of torture and repression in South America: Use, manufacture and trade*. Available at: <https://omegaresearchfoundation.org/publications/tools-torture-and-repression-south-america-use-manufacture-and-trade-july-2016>.

See also, for example,

Dirección General de la Policía Nacional, Proceso Número PN DIRAF CD 144 2013. Accessed 1 June 2016.

<https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=13-12-1984581>.

Colombia Licita. Antimotín importado – PONAL: ADQUISICION EQUIPO ANTIMOTIN IMPORTADO. Accessed 15 February 2022. Available at: <https://colombialicita.com/licitacion/1919>.

Cuestión Pública. 2021. ‘Los millonarios contratos de armas “no letales” para la Policía y el Esmad’ 6 February, 2021. Accessed 4 March, 2022

<https://cuestionpublica.com/los-millonarios-contratos-de-armas-no-letales-para-la-policia-y-el-esmad/>

Government between 400 million and 445 million pesos, although the precise figure is not clear.⁴² In addition to the system itself, the Colombian Government purchased cartridges from CSI for the VENOM, including, for example, signing a 745 million pesos contract for stun and tear gas cartridges.⁴³

Targeting of Black Lives Matter protestors in the United States

48. After the May 25, 2020, killing of George Floyd by police in Minneapolis, captured on video and shown widely across the United States and around the world, millions of people took to the streets nationwide to support the Black Lives Matter movement and demand police accountability.
49. While protests in the United States in June and July of 2020 were overwhelmingly peaceful and without incident, some devolved into violent confrontations between police and protestors, including widespread law enforcement use of CCWs, including KIPs. In an effort to record the scope of KIP use and the resulting injuries, PHR used open-source research methods to collect publicly available data. PHR identified at least 115 people across the United States who were shot in the head or neck with KIPs from May 26 to July 27, 2020.

⁴² El Espectador. 2021. 'Venom: el arma en la tanqueta del Esmad, que causó pánico en el sur de Bogotá, en el Paro Nacional'. 5 May 2021. Accessed 6 December 2021. Available at : <https://www.elespectador.com/bogota/venom-el-arma-en-la-tanqueta-del-esmad-que-causo-panico-en-el-sur-de-bogota-en-el-paro-nacional-article/>.

2021. 'Informe de Temblores, Indepaz y Paiis a la CIDH sobre las violaciones a los derechos humanos cometidas por la fuerza pública contra la población civil colombiana en el marco del Paro'. Equipa Nizkor. June 2021. Accessed 7 December 2021. Available at: https://paiis.uniandes.edu.co/wp-content/uploads/Informe-CIDH-Versio%CC%81n-Conjunta.final_.pdf.

Contagioradio. 2021. 'Venom: una de las costosas armas del ESMAD' 9 May 2020. Accessed 7 March 2022. Available at:

https://www.contagioradio-com.translate.goog/venom-una-de-las-costosas-armas-del-esmad/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp.

⁴³ Temblores, Indepaz, and Paiis 2021. 'Informe de Temblores, Indepaz y Paiis a la CIDH sobre las violaciones a los derechos humanos cometidas por la fuerza pública contra la población civil colombiana en el marco del Paro'. Equipa Nizkor. June 2021. Accessed 7 December 2021. Available at: <http://www.derechos.org/nizkor/////colombia/doc/duque54.html#disparos>.

According to a civil suit filed on behalf of protestors injured by law enforcement, at approximately 6:25 p.m., Tina Crnko is struck in the forehead with a KIP “above her right eye, causing a temporary hearing loss and extreme pain. She was bleeding profusely. With officers continuing to advance on the group, she could not get help from a medic on site. The resulting wound required seven stitches. She still suffers nerve damage in the area of impact.” The use of multi-projectile rounds contravenes international standards that “Multiple projectiles fired at the same time are inaccurate and, in general, their use cannot comply with the principles of necessity and proportionality.”

CLOSING CONSIDERATIONS

50. In recent years, there has been a rapid development of international and regional laws and standards relating to the protection and promotion of assembly, association, and free expression rights. These include new international laws and standards regulating the development, testing, trade, use and misuse of CCWs. Underpinned by existing, binding international instruments, these new laws and standards strengthen assembly, association, and free expression rights, as well as rules on the use of CCWs in protest contexts. However, the implementation and adoption of these new laws and standards at the national level have been limited, severely restricting the application of these rights in real-world protest contexts.
51. The most notable legal developments include the 2020 UN Guidance on LLWs,⁴⁴ which INCLO and PHR helped inform.⁴⁵ In addition, the UN Human Rights Committee has produced two General Comments which, alongside various UN Human Rights Resolutions⁴⁶ and regional standards, give further guidance to states and law enforcement on the assembly, association and free expression rights of protestors, and the lawful use of LLWs. Despite this expansion of international legal standards, there is limited evidence of the implementation of these standards at the national level. Resultantly, consistent violations of human rights and civil liberties in protest contexts stubbornly persist and, in some instances, have increased over the past years. Monitoring and reporting on, and accountability for, the use of CCWs by law enforcement officials remains a key area of concern, despite clear international law guidance on the need to ensure oversight over policing operations in protest contexts. A legally binding instrument could be an important step in addressing these pervasive challenges.
52. CCWs can and have been used for collective punishment.

⁴⁴ See above n 6.

⁴⁵ The UN Guidance on LLWs and other groups use the term less-lethal weapons (LLWs) while our report uses the term crowd-control weapons (CCWs). Our report uses the term CCW to avoid suggesting that these weapons are not dangerous. Lethality is based not only on the weapon profile but on how it is used. A more objective term in this sense is CCWs, as it covers all weapons used in assemblies. In the context of this section, and where necessary, we use LLW as that is the term the UN uses. In practice, they can be used interchangeably.

⁴⁶ See, for example, UNHRC Res. 25/38 (2014) and UNHRC Res. 38/11 (2018).

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53. Some attacks on protestors with CCWs constitute torture or ill-treatment.
54. Public documentation of the purchase of CCWs requires prompt regulation and consistency at international level and should be a key component of the proposed Torture-Free Trade Treaty.
55. INCLO and PHR are thankful to the U.N. Special Rapporteur on Torture for her consideration of this contribution and remain at her disposal for any further consultation that would benefit the preparation and drafting of the interim report to be presented at the 78th Session of the U.N. General Assembly.