



PLASTIC BULLETS:  
A HUMAN RIGHTS PERSPECTIVE

 SEPTEMBER 2005 

## INTRODUCTION

British Irish RIGHTS WATCH is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict and the peace process, in Northern Ireland since 1990. Our services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.

We are opposed to the deployment of plastic bullets because we regard them as lethal weapons that should have no place in the policing of a democratic society in the twenty-first century.

Between September 2002 and July 2005, no plastic bullets were fired by the police or the army in Northern Ireland. Indeed, plastic bullets have not been used in the city of Derry, despite some serious incidents involving public disorder, since 1998<sup>1</sup>. On 1<sup>st</sup> December 2004, the Chief Constable of the Police Service of Northern Ireland (PSNI) told the Policing Board:

“Our intention is not to use them [plastic bullets] but we retain the right to hold them and the right to deploy them if the only alternative would be to use lethal force in the form of live rounds, which would be deeply unsatisfactory and extremely bad policing. In the light of the current situation we would be able to reduce the daily number we keep, the number of officers we train, and the number of guns we need.”<sup>2</sup>

Although 33 plastic bullets were fired on two occasions in July and August 2005, BIRW was still hopeful that they were becoming a thing of the past. However, ominously, the Chief Constable of the PSNI told the Policing Board that he had ordered a review of the guidelines for firing following these events<sup>3</sup>. Then over the weekend of 10<sup>th</sup> and 11<sup>th</sup> September 2005 very serious rioting by loyalists broke out which involved violent attacks on the police, including the firing of live ammunition. The security forces responded by firing 486 AEPs (the latest form of plastic bullet), and our hopes were dashed.

In this report we examine the history of the deployment of plastic bullets, the deaths and injuries they have caused, the incidence of their use, domestic and international law and concern about plastic bullets, the recommendations of the Patten Commission, and the mechanisms for scrutinising their use that have been introduced relatively recently. Of particular concern is that the firing of plastic bullets by the army currently comes under no independent scrutiny.

## PLASTIC BULLETS – A LETHAL WEAPON

The onset of the violent conflict in Northern Ireland in 1969 was accompanied by serious civil unrest. Crowd control techniques such as the use of water cannon and CS gas were not felt by the security forces to be adequate, and in the 1970s first rubber and then plastic bullets were introduced. They were

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<sup>1</sup> *Non-use of plastic bullets praised, Irish News, 26 July 2005*

<sup>2</sup> *Orde hopes to phase out plastic bullets, by Sharon O'Neill, Irish News, 2 December 2004*

<sup>3</sup> *Twelfth riots prompt plastic bullet review, Sunday Life, 4 September 2005*

seen by the government as an alternative to the use of live ammunition to combat stone-throwers and petrol bombers<sup>4</sup> and by the security forces as a weapon that allowed them to control rioters without coming into physical contact with them<sup>5</sup>.

Rubber bullets were introduced in Northern Ireland in 1970. They were 5.75 inches in length, 1.5 inches wide, and weighed 5.25 ounces. They caused an unacceptable level of casualties<sup>6</sup>, they ricocheted unpredictably, and they tumbled in flight. They continued to be used until 1975.

Plastic bullets were introduced in 1973. The version in use until June 2005, the L21A1, was 4 inches long, 1.5 inches wide, and weighed 5 ounces. Plastic bullets were made of a much harder substance than rubber bullets.

A plastic bullet fired at a range of 50 yards from its target has an impact energy of 110ft/lb, the equivalent of a 2lb weight being dropped from a height of 55ft. An impact energy in excess of 90ft/lb has been found to cause death or significant damage.<sup>7</sup> The shorter the distance from which a plastic bullet is fired, the greater its impact energy. Most plastic bullets are fired at much closer range than 50 yards, sometimes at point blank range. The guidelines for their use recommended a minimum distance of only 20 yards.

Problems have occurred with the manufacture and use of plastic bullets. In 1997 a batch of the bullets had to be withdrawn after Ministry of Defence tests found that a significant proportion of the batch had muzzle velocities in excess of the recommended upper limit<sup>8</sup>. A second batch were subsequently found to be heavier than the permitted limit<sup>9</sup>. The Committee on the Administration of Justice has suggested that many, if not all, of the plastic bullets fired in 1996 may have been defective<sup>10</sup>. Independent observers monitoring the situation during the summer marching season in Northern Ireland in recent years have observed the guns used to fire plastic bullets jamming and overheating when used repeatedly<sup>11</sup>.

Although intended as a non-lethal weapon, seventeen people have died as a result of the use of rubber and plastic bullets. Between 1970 and 15<sup>th</sup> November 1998, 55,834 rubber bullets and 68,995 plastic bullets were fired, 124,829 in all<sup>12</sup>. Rubber bullets resulted in three deaths, giving a ratio of one

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<sup>4</sup> *Hansard*, House of Lords, 20 October 1981, cols 689-690

<sup>5</sup> *The Use of Rubber and Plastic Bullets in Northern Ireland*, Dominic Bell, [hereinafter, Bell] unpublished dissertation, Magee College, 1999, p. 12

<sup>6</sup> *Jane's Infantry Weapons 1976*, Jane's Defence Year Books, London, quoted in Bell, p.14

<sup>7</sup> Bell, p.18

<sup>8</sup> *The Independent*, 21 June 1997

<sup>9</sup> *Plastic Bullets: A Briefing Paper*, Committee on the Administration of Justice, Belfast, 1998, p.14

<sup>10</sup> *Policing the Police: A report on the policing of events during the summer of 1997 in Northern Ireland*, Committee on the Administration of Justice, Belfast, 1997, p.9

<sup>11</sup> *The Misrule of Law: A report on the policing of events during the summer of 1996 in Northern Ireland*, Committee on the Administration of Justice, Belfast, 1996, p.35

<sup>12</sup> *Hansard*, House of Commons, 19 November 1998, col. 741

death for every 18,611 bullets fired. The 14 fatalities caused by plastic bullets result in a ratio of 1:4,928. Thus plastic bullets are more than four times as deadly as rubber bullets, despite the fact that they were intended to be safer.

#### **FATALITIES CAUSED BY PLASTIC AND RUBBER BULLETS**

<b>NAME</b>	<b>AGE</b>	<b>RELIGION</b>	<b>DATE</b>	<b>TYPE</b>	<b>CIRCUMSTANCES</b>
Francis Rowntree	11	Catholic	22 April 72	rubber	shot by army in head from distance of 5 to 7 yards from an armoured vehicle at Divis Flats, Belfast
Tobias Molloy	18	Catholic	16 July 72	rubber	shot in chest by army from range of 2 or 3 yards during rioting outside an army base in Strabane; eyewitnesses said he was not involved in the riot
Thomas Friel	21	Catholic	22 May 73	rubber	died five days after being shot by army in head from 25 to 30 yards during riots in Creggan, Derry
Stephen Geddis	10	Catholic	30 Aug 75	plastic	died two days after being shot in head from 40 yards by army at Divis Flats, Belfast; the army claimed he was one of large group of children attacking them with stones, but the inquest found there was no riot and eyewitnesses said he was not involved in stone-throwing
Brian Stewart	13	Catholic	10 Oct 76	plastic	shot in head from 10 yards by army in Turf Lodge, Belfast; a civil case found that he had been participating in a riot
Michael Donnelly	21	Catholic	9 Aug 80	plastic	shot in chest from 15 to 20 yards by army, Falls Road, Belfast, after a riot was over; in a civil claim the court held that his shooting was "uncalled for and unjustified"
Paul Whitters	15	Catholic	25 April 81	plastic	shot by RUC in Derry from distance of 5 to 7 yards, died 10 days later
Julie Livingstone	14	Catholic	13 May 81	plastic	shot in head by army from 7 yards in Suffolk area of Belfast while walking home; the

					inquest found her to have been an innocent victim
Carol Anne Kelly	12	Catholic	22 May 81	plastic	injured by army in head and face while walking home in Twinbrook, Belfast, died 2 days later; also found by the inquest to have been an innocent victim
Henry Duffy	45	Catholic	22 May 81	plastic	shot in head/chest by army while walking in Bogside, Derry; not involved in rioting
Nora McCabe	30	Catholic	9 July 81	plastic	died one day after being shot in head from 2 yards by RUC from armoured vehicle in Lower Falls, Belfast; at her inquest the RUC said that there was a riot taking place and that they had not fired in her vicinity, but film by a Canadian TV crew showed that there was no riot and that she had been shot from the RUC vehicle
Peter Doherty	36	Catholic	31 July 81	plastic	shot in head by army at the third-floor window of his home in Divis Flats, Belfast
Peter McGuinness	41	Catholic	9 Aug 81	plastic	shot in chest by RUC from less than 3 yards outside his home in Greencastle, Belfast
Stephen McConomy	11	Catholic	19 April 82	plastic	died 3 days after being shot in head from 5 to 6 yards by army in armoured vehicle; the riot gun used was defective
Sean Downes	22	Catholic	12 Aug 84	plastic	shot in chest from less than 2 yards by RUC during anti-internment march, Andersonstown, Belfast; although the RUC claimed self-defence, Sean Downes had only a short stick of wood in his hands
Keith White	20	Protestant	14 April 86	plastic	died 15 days after being shot in head at point-blank range by RUC during riots in Portadown
Seamus Duffy	15	Catholic	9 Aug 89	plastic	shot by RUC in chest

					while walking in New Lodge, Belfast
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Five aspects of these shootings are immediately striking:

- First, all but one of the victims were Catholics.
- Secondly, nine of the seventeen victims were aged 18 or under, the youngest being 10 years old. Only five of the victims were aged over 21.
- Thirdly, many of the victims were not involved in rioting.
- Fourthly, many of the victims were shot at much too close a range and were struck in the head or upper body, in contravention of the guidelines then in force.
- Fifthly, six of the victims did not die immediately but lingered for between one and fifteen days.

On 17<sup>th</sup> August 2004, Dominic Marron died of a heart attack at the age of 37. He had been shot in the head with a plastic bullet by an RUC officer on 9<sup>th</sup> May 1981, when he was only 14 years old. He had to be treated in the intensive care unit and suffered brain damage and paralysis. His family are convinced that his premature death was directly related to the traumatic injuries caused by being shot with a plastic bullet.<sup>13</sup>

### **INJURIES CAUSED BY PLASTIC BULLETS**

In 1971, Emma Groves was blinded when a rubber bullet fired into her home destroyed both her eyes. In August 1995, a year after the first ceasefire, Tommy Turner was hit in the face by a plastic bullet. His facial bones were fractured in seven places and he required 64 stitches, the insertion of two steel plates, and plastic surgery.<sup>14</sup> According to the Report of the Independent Commission on Policing for Northern Ireland 615 people had been injured by plastic bullets between 1981 and 1999<sup>15</sup>. The report does not give the origin of this figure, but it is almost certainly an underestimate (please see below).

The fact that the last fatality caused by a plastic bullet happened in 1989 does not indicate that plastic bullets are used less often, nor does it appear that they have become any safer.

A solicitor in Northern Ireland, Eamann McMenamin of the firm Madden & Finucane in Belfast, put in a submission to the Patten Commission concerning his professional experience of dealing with cases of injury caused by plastic bullets during the disturbances surrounding the marching season in the summers of 1996 and 1997. He received instructions in 24 such cases, five of them involving women and two of them involving children aged 13 and 15, both of whom sustained head injuries. By June 1998 he had settled 17 of the cases, none of which went to court, and had obtained the sum of £428,204 in

<sup>13</sup> *Plastic Bullets Claim Another Life*, Relatives for Justice press release, 23 August 2004

<sup>14</sup> *Just News*, Committee on the Administration of Justice, Belfast, vol 11 no 6, June 1996, p.4

<sup>15</sup> *A New Beginning; Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, p. 54

damages for his clients. The settlements he achieved can be summarised as follows:

	DATE	NATURE OF INJURY	DAMAGES
1.	9 July 96	loss of eye fractured cheekbone	£115,962
2.	11 July 96	injury to thigh permanent scarring	£12,500
3.		multiple injuries	£7,500
4.	12 July 96	injury to thigh permanent scarring	£15,000
5.		chest and back injuries	£10,000
6.	13 July 96	injuries to ribs and kidneys	£15,000
7.		eye injury scarring	£5,000
8.		chest injuries	£28,241
9.		eye injury permanent scarring	£20,000
10.	14 July 96	fractured jaw	£25,000
11.	27 July 96	loss of eye	£100,000
12.		hand injuries	£7,500
13.		injuries to abdomen	£4,000
14.	6 July 97	injuries to mouth and teeth severe post traumatic stress disorder	£27,500
15.		eye injury permanent scarring	£20,000
16.		fractured jaw	£10,000
17.	7 July 97	thigh injuries	£5,000

In April 1999 a group of five senior doctors who had treated people injured by plastic bullets during the period 8<sup>th</sup> to 14<sup>th</sup> July 1996 in six different hospitals published their findings<sup>16</sup>. During that week, 8,165 plastic bullets were fired throughout Northern Ireland. They treated 155 patients who had been injured by plastic bullets. It is this figure that suggests that the figure of 615 injuries between 1981 and 1999 is likely to be an underestimate. No fewer than 29,695 plastic bullets were fired in 1981, the year of the hunger strikes. Seven of the 17 fatalities occurred in that year. If the rate of injury was equivalent to that in the week surveyed by the doctors in 1996, 564 injuries would have been expected in 1981 alone. The doctors' figures also allow for a direct comparison. The government asked Her Majesty's Inspector of Constabulary to study the RUC's use of plastic bullets during 1996. In their report, they gave a figure, which presumably came from the RUC themselves, of just 20 injuries for the period 1<sup>st</sup> January to 25<sup>th</sup> August 1996<sup>17</sup>, although the doctors recorded 155 persons injured during just one week of that period, nearly eight times as many.

<sup>16</sup> *Plastic Bullet Injuries in Northern Ireland: Experiences during a Week of Civil Disturbance*, by James A Steele MB FRCS, Samuel James McBride BCh MRCP, Jarlath Kelly MB BCh, Christine H Dearden MB FRCS FFAEM, and Laurence G Roche FRCS FFAEM, *Journal of Trauma, Injury, Infection and Critical Care*, vol 46 no 4, April 1999, pp. 711 -714

<sup>17</sup> *1996 Primary Inspection of the RUC by Her Majesty's Inspector of Constabulary*, HMSO, December 1996, p. 69

The 155 patients had sustained 172 injuries. 19% of these injuries were to the head, face or neck; 20% were to the chest or abdomen; and 61% were to limbs. 42 patients had to be admitted to hospital, three of them to intensive care. The age of the patients ranged from 14 to 54 years. 28 of those injured were aged 20 or under; 66 were aged between 21 and 30; 24 were aged between 31 and 40; and 12 were aged 41 or over<sup>18</sup>. 16 of the victims were women.

Their findings show that at least 39% of injuries were sustained to the upper body, in contravention of the guidelines<sup>19</sup>. They also show that young men were overwhelmingly likely to be the targets of plastic bullets, with 19% of victims aged 20 or under and 44% aged between 21 and 30. After reviewing other medical studies of the effects of plastic bullets, the doctors concluded that, whereas the previous standard for deeming such injuries to be life-threatening had been injury to the diaphragm or above, a more appropriate measure would be injuries to the abdomen or above. By that measure, 39% of all the cases they treated involved life-threatening injuries.

Another firm of solicitors, Kevin R Winters & Co, have supplied details of more recent injuries suffered by some of their clients.

	DATE	AGE	SEX	RELIGION	FIRE BY	INJURIES	LOCATION
1.	27.7.01	n/k	M	C	police	hit on right leg (swollen and bruised) while lying on the ground, having been knocked over by a water cannon – second shot missed – more shots fired than 45 claimed by police – deterred from getting casualty treatment by police presence at Royal Victoria Hospital	Ardoyne
2.	August 01	n/k	M	C	n/k	abdominal injury	North Belfast
3.	14.5.02	37	F	C	n/k	shattered elbow – bled for 2 days – taken to hospital by ambulance –	Short Strand

<sup>18</sup> The age of five of them was not known.

<sup>19</sup> It is not known how many of the limb injuries involved the upper limbs



						hospitalised for 5 days, will probably require surgery – fired upon without provocation – no rioting in immediate vicinity	
4.		19	F	C	n/k	badly bruised shin, left ugly scar	Short Strand
5.		16	M	C	n/k	hit on breast bone – coughing up blood – watching events – taken to hospital by ambulance	Short Strand
6.		16	M	C	n/k	hit in left shin – watching events	Short Strand
7.		42	M	C	police?	hit in leg – not involved in rioting, police were leaving the area when he was shot	Short Strand
8.		31	M	C	army?	hit in back of knees while trying to get home avoiding riots – one knee badly bruised	Short Strand
9.		37	M	C	n/k	hit on leg and knocked to ground – not rioting, out looking for 14 year old son	Short Strand
10.		n/k	M	C	army?	hit in chin – required stitches – not rioting	Short Strand
11.		30	M	C	army	youth worker involved in trying to keep the peace - right upper arm fractured in 3 places – taken to hospital by	Short Strand

						ambulance – operation necessary to insert plates and screws – suffered post-operative radial nerve palsy and dropped wrist	
12.	13.6.02	32	M	C	army on police instructions	community worker targeted while trying to calm things down, hit at top of right leg	Short Strand
13.		over 18	F	C	army	fractured right leg, severe bleeding - not rioting, out looking for sons – taken to hospital by ambulance	Short Strand
14.		over 18	M	C	n/k	hit on upper right arm – not rioting, out looking for 13 year old niece	Short Strand
15.		under 18? at school	M	C	army?	struck twice, first on back of leg and then on foot – second shot hit him while lying on ground	Short Strand
16.	14.6.02	under 18? at school	M	C	n/k	hit on right thigh and knocked to ground – not rioting – taken to hospital by ambulance	Short Strand
17.	28.8.02	under 18	M	C	army	hit twice in the back – spinal injuries and nerve damage – caused bleeding – had to wait 45 minutes for	Short Strand

						ambulance because road blocked off	
18.		n/k	M	C	army	swelling and bruising to back of left shoulder – hit while going to assistance of Joseph O'Donnell – streets were dark	Short Strand
19.		n/k	M	C	army	hit in arm – will probably need steel plate – jaw also clipped by the bullet	Short Strand
20.		n/k	M	C	army	hit in left upper rib cage – on ventilator and heart monitor – shooting in darkness – on way home from work	Short Strand
21.		n/k	M	C	army	hit in leg and knocked to ground – not rioting	Short Strand
22.	29.8.2000	n/k	M	C	army	hit in left foot; suffered minor fracture of cuboid bone and had leg in plaster for 6 weeks – not rioting – on way home from checking on grandfather	Short Strand

The guidelines for the use of plastic bullets say that they should be fired in order that they strike the target in the lower part of the body. It is obvious that in the majority of these cases that the guidelines were not followed. Several of these injuries were life-threatening, and have resulted in permanent maiming and scarring. It is simply a matter of luck that no-one was killed.

### **ATTENUATING ENERGY PROJECTILES (AEPs)**

On 21<sup>st</sup> June 2005, the attenuating energy projectile (AEP), known as the L606A1, and formally referred to as an impact round, was brought in to replace the L21A1 plastic bullet, following research commissioned by the

Northern Ireland Office to search for a less lethal alternative to the plastic bullet, as recommended by the Patten Commission on police reform.

As the Oversight Commissioner whose office was established to oversee the Patten reforms has commented<sup>20</sup>, the AEP is not an alternative, but simply a different type of plastic bullet. Its principal difference from the L21A1 is that it has an air pocket in the nose of the bullet which collapses on impact, thereby diffusing the force of its contact. In theory, it should be less likely to cause fractures, for example of the skull.

The Defence Scientific Advisory Council's sub-committee on the Medical Implications of Less-Lethal Weapons (DOMILL) has produced a statement on the comparative potential for causing injury of the AEP as compared to the L21A1. It concludes that the risk of an AEP impact to vulnerable areas such as the head and chest "will not exceed" that of the L21A1. Nor does the AEP pose a greater hazard to the chest or abdomen. In other words, in these respects the AEP is no safer than the L21A1. Its only benefits are that it is less likely to penetrate the skin, and that, should an AEP strike someone's head, "the severity and incidence of skull fracture is likely to be lower with an AEP", the bullet will intrude less far into the brain, and it will result in less brain damage. However, DOMILL warns:

"The clinical impact of the reduction in damage to the brain and overlying skull from the AEP cannot be assessed confidently because of limitations in current models for this type of impact. Notwithstanding the uncertainties in the actual clinical consequences, the AEP certainly demonstrates the potential for less severe clinical outcomes, compared to the L21A1."<sup>21</sup>

The Northern Ireland Commissioner for Children and Young People, Nigel Williams, has expressed concern that no full child impact assessment has been carried out on the AEP, and has requested a full assessment of its impact on children. His aim is that AEPs "should not be used in any circumstances where children are present and at risk of being harmed".<sup>22</sup>

Controversy surrounded the introduction of AEPs. There was no consultation exercise prior to their introduction. A number of human rights groups took the view that the Chief Constable could not purchase AEPs without consulting the Policing Board because they could be considered as novel and/or contentious items. However, after taking legal advice, the Policing Board seems to have concluded that the Chief Constable was only under a duty to notify them of any such expenditure, and they do not have the power to approve or disapprove his decision to deploy AEPs, or, presumably, any other weapon. If this is true, then it is a matter of grave concern, given the important role played by the Policing Board in ensuring that the PSNI complies with human rights standards<sup>23</sup>.

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<sup>20</sup> Office of the Oversight Commissioner, Report 11, September 2004, p. 52

<sup>21</sup> *Statement on the comparative injury potential of the attenuating energy projectile (AEP) L60A1, and the L21A1 baton round*, DOMILL, April 2005

<sup>22</sup> *Submission to the United Nations Secretary General's Study on Violence against Children*, Northern Ireland Commissioner for Children and Young People, March 2005

<sup>23</sup> According to the Policing Board's website, one of its key functions is "securing,

Regrettably AEPs were used within three weeks of their introduction, after an unofficial moratorium on the use of plastic bullets which had lasted for two and three quarter years. Twenty two AEPs were fired on 12<sup>th</sup> July in Ardoyne<sup>24</sup> and a further eleven on 4<sup>th</sup> August in Woodvale in north Belfast<sup>25</sup>.

In both cases, the police were faced with serious rioting. In Ardoyne, nationalists rioted after an Orange Order parade, trouble which had been widely predicted following the revocation of Sean Kelly's licence and his return to prison, which was perceived as a measure calculated to put pressure on the IRA to finally end any engagement in violence<sup>26</sup>. Sean Kelly's subsequent release on the eve of the IRA's announcement reinforced this perception. It was reported that the police requested permission to fire AEPs up to eight times before permission was granted<sup>27</sup>. Nine blast and dozens of petrol bombs were thrown at members of the security forces; about 100 police officers were injured; two journalists, two ambulance crew and eight other members of the public were also hurt<sup>28</sup>.

It is not clear whether the eight members of the public who were hurt included two people who were injured by AEPs. A 22-year-old man said that he had been singled out by the police as he stood by the side of the road. He was hit in the stomach. He said, "... I felt an awful pain. I hit the ground and I could not breathe". A 15-year-old boy was hit on the back of the leg and hurt his knee as he fell. His mother, who claimed that her son was not rioting and had his back to the police when he was hit, said, "He was very pale, shaken and confused and his leg was swollen." Both these people were later arrested for rioting.<sup>29</sup> It is of particular concern that one of those hit was a child and the other was hit in the stomach, in breach of the firing guidelines. It has been claimed that several other people were also injured by AEPs<sup>30</sup>.

Those rioting on 12 July, it has been alleged, were predominantly young people. One journalist wrote, '... there was hardly a rioter from Ardoyne over the age of 16. I stood there for two hours watching them. They were all kids. Recreational rioters, motivated more by the six-pack than the six counties.'<sup>31</sup>

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<sup>24</sup> *Police 'made eight requests to use plastic bullets'*, UTV Internet News 14 July 2005

<sup>25</sup> *Officers injured in Belfast riot*, BBC Internet News, 5 August 2005

<sup>26</sup> Sean Kelly had been convicted of bombing a fish and chip shop in the Shankill Road in 1993, killing nine people. He was released on license from his life sentence under the provisions for the early release of paramilitary prisoners under the 1998 Good Friday Agreement. His license was revoked in June 2005 after allegations that he had been orchestrating republican violence. These allegations were hotly disputed by Sean Kelly and a number of influential community leaders.

<sup>27</sup> *Police 'made eight requests to use plastic bullets'*, UTV Internet News, 14 July 2005

<sup>28</sup> *100 officers injured as violence flares in Ardoyne*, PSNI press release, 12 July 2005

<sup>29</sup> *Two arrested on riot charges*, *Daily Ireland*, date???

<sup>30</sup> *Ardoyne faces the fallout*, by Connla Young, *Daily Ireland*, 15 July 2005

<sup>31</sup> *Respect and equality the solution to Ardoyne*, by Anne Cadwallader, *Daily Ireland*, 14 July 2005

In Woodvale, loyalists rioted after the police had conducted a number of searches, perceived by those affected as heavy-handed, in a bid to crack down on a bloody UVF/LVF feud. Police were attacked with petrol bombs, fireworks and “an explosive type device”. Forty officers were injured.<sup>32</sup> It is not known whether anyone was hurt by an AEP.

A very large number of AEPs were fired over the period 11<sup>th</sup> to 12<sup>th</sup> September 2005, during serious rioting following a ruling by the Parades Commission that the Orange Order’s Whiterock parade be re-routed. On 10<sup>th</sup> September 2005, the police and army fired around 450 AEPs, and the police fired six live rounds and the army fired one after loyalists opened fire on them<sup>33</sup>. On 11<sup>th</sup> September 2005 the police fired 16 AEPs in east Belfast; the police fired 3 more AEPs and the army fired another 3 in east Belfast; the police also fired 12 AEPs in north Belfast. Two AEPs were fired by the army in Newtownabbey.<sup>34</sup> In all 486 AEPs were fired during this period, of which 216 were fired by the police and the rest were fired by the army<sup>35</sup>. The rioting was the most serious seen in Northern Ireland for a decade. Less serious rioting took place on 13<sup>th</sup> September, when there were no reports of AEPs having been fired. BIRW has seen one report of a woman being hit in the stomach by a plastic bullet which ricocheted. The same article made unsubstantiated claims of broken legs, strapped-up shoulders and a 15-year-old who lost his testicles.<sup>36</sup> Figures are awaited from the PSNI concerning all injuries suffered from plastic bullets.

## FIRING RATES

It is surprisingly difficult to obtain accurate figures concerning the number of plastic bullets fired. Different official sources give different figures and there is confusion over whether figures quoted apply to numbers fired by the RUC, the army or both. These are the best available figures since 1981:

YEAR	NUMBER FIRED BY POLICE <sup>37</sup>	NUMBER FIRED BY ARMY <sup>38</sup>	ALL PLASTIC
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<sup>32</sup> *Serious disorder north Belfast 05 08 05*, PSNI press release, 5 July 2005  
<sup>33</sup> *Serious disorder following Whiterock parade 10/09/05*, PSNI press release, 10 September 2005  
<sup>34</sup> *Further loyalist violence 12/09/05*, PSNI press release, 10 September 2005  
<sup>35</sup> *Revealed – the horrific tally from loyalist riots*, by Deborah McAleese, *Belfast Telegraph*, 14 September 2005  
<sup>36</sup> *“If I were a few years younger, I’d be rioting myself”*, by Suzanne Breen, *Sunday Tribune*, 18 September 2005  
<sup>37</sup> Answer to Parliamentary Question 17758, *Hansard*, col 882W, 9 January 2002 (1981 – 2001), Police Ombudsman Regulation 20 reports (2002), Chief Constable’s Report 2004/5 (2003 – 2004), UTV Internet News 14 July 2005 and BBC Internet News 5 August 2005 (2005), PSNI press releases, 10 and 12 September 2005, *Revealed – the horrific tally from loyalist riots*, by Deborah McAleese, *Belfast Telegraph*, 14 September 2005  
<sup>38</sup> Unless otherwise indicated, these figures are obtained by subtracting the numbers of plastic bullets fired by the police from the overall total

	no	%	no	%	BULLETS FIRED <sup>39</sup>
1981	19,649	66	10,046	34	29,695
1982	335	69	154	31	489
1983	545	82	116	18	661
1984	1,503	85	265	15	1,768
1985	906	77	266	23	1,172
1986	1,462	82	323	18	1,785
1987	1,908	74	667	26	2,575
1988	2,292	75	773	25	3,065
1989	836	86	137	14	973
1990	211	82	46	18	257
1991	235	78	88	22	323
1992	39	44	49	66	88
1993	497	95	26	5	523
1994	214	86	35	14	249
1995	273	100	0	0	273
1996	6,949	85	1,216	15	8,165
1997	2,527	100	0	0	2,527
1998	1,236	100	1	0	1,237
1999	111	100	1	0	112
2000	22	85	4	15	26
2001	92	84	17 <sup>40</sup>	16	109
2002	237 <sup>41</sup>	74	85 <sup>42</sup> (to 31.10.02)	26	322
2003	0	0	0	0	0
2004	0	0	0	0	0
2005 (to 11.9.2005)	249	48	270	52	519
TOTAL	42,328	74	14,585	26	56,913

On average, just over 1,000 plastic bullets were fired each year between 1982 and 1995<sup>43</sup>. However, the number of plastic bullets fired each year has varied considerably. In 1981, the year of the hunger strikes in Northern Ireland, the exceptionally high number of 29,695 bullets were fired. Since then, the least were fired in 2000, when only 26 shots were recorded. No plastic bullets were fired at all in Northern Ireland between September 2002 and July 2005<sup>44</sup>. This

<sup>39</sup> Compiled from *The Misrule of Law*, p. 77 (1981 – 1995), *Plastic Bullet Injuries in Northern Ireland: Experiences during a Week of Civil Disturbance* (1996), BBC News 1 August 1999 (1997 – 1998), Draft 4<sup>th</sup> Report to the United Nations Committee Against Torture by the UK government, paragraph 86 (1999 – 2000) (these figures did not appear in the final report), Police Ombudsman Regulation 20 reports and Military Assessor's report (please see footnote 28) (2001 – 2002), Chief Constable's Report 2004/5 (2003 – 2004), UTV Internet News 14 July 2005 and BBC Internet News 5 August 2005 (2005)

<sup>40</sup> This figure is taken from *A Review of Military use of Baton Rounds in Northern Ireland 1 January 2001 – 31 October 2002*, Independent Assessor of Military Complaints Procedures in Northern Ireland [Military Assessor's report]

<sup>41</sup> This figure is compiled from the Police Ombudsman's reports on plastic bullets fired by the police in 2002 – see <http://www.policeombudsman.org/Reports.cfm?catID=1&desc=1&action=page> – however, the Military Assessor's report says that the police fired 255 times between 1.1. and 31.10.2002

<sup>42</sup> Military Assessor's report

<sup>43</sup> *The Misrule of Law*, p. 26

<sup>44</sup> Chief Constable's Annual Report 2004/2005

welcome respite came to an end during the marching season on 2005, when 22 AEPs were fired on 12<sup>th</sup> July in Ardoyne<sup>45</sup> and a further 11 on 4<sup>th</sup> August in Woodvale in north Belfast<sup>46</sup> and another 486 were fired between September 11<sup>th</sup> and 12<sup>th</sup>. Thus almost as many AEPs (519) were fired in four days in 2005 as plastic bullets (569) were fired in the almost four year period from 1<sup>st</sup> January 1999 to 31<sup>st</sup> October 2002.

Until 1996, 1987 (2,575 bullets fired) and 1988 (3,065) saw the highest annual totals since 1981, but in 1996 6,002 plastic bullets were fired by the RUC in a single week during the Drumcree crisis.<sup>47</sup> In 1997 some 2,500 plastic bullets were fired during the equivalent week<sup>48</sup>. In 1998, 823 bullets were fired during Drumcree, and in 1999, according to the RUC, only one plastic bullet was used at Drumcree<sup>49</sup>.

Between 1998 and 2005, there was a dramatic decrease in the number of plastic bullets deployed, which is discussed below. The equally dramatic increase in their use in 2005 is also discussed.

It should also be noted that the majority of the 56,913 plastic bullets fired between January 1981 and September 2005 have been fired by the police (74%), rather than the army (26%). In 1992 the army fired more often than the police, but little significance can be drawn from that fact because only 88 plastic bullets were used in that year. However, in 2005, the army has so far fired more AEPs than the police.

Despite the fact that they have fired fewer plastic bullets, the army has been responsible for 11 of the 17 fatalities caused by plastic and rubber bullets, as follows:

NAME	DATE	PERPETRATORS
Francis Rowntree	22 Apr 72	Royal Anglians
Tobias Molloy	16 Jul 72	British soldier
Thomas Friel	22 May 73	Royal Artillery Regiment
Stephen Geddis	30 Aug 75	Royal Anglians
Brian Stewart	10 Oct 76	King's Own Scottish Borderers
Michael Donnelly	9 Aug 80	Royal Artillery Regiment
Paul Whitters	25 Apr 81	RUC
Julie Livingstone	13 May 81	Prince of Wales Regiment
Carol Anne Kelly	22 May 81	Royal Fusiliers
Henry Duffy	22 May 81	Royal Anglians
Nora McCabe	9 Jul 81	RUC
Peter Doherty	31 Jul 81	Royal Marines
Peter McGuinness	9 Aug 81	RUC

<sup>45</sup> Police 'made eight requests to use plastic bullets', UTV Internet News 14 July 2005

<sup>46</sup> Officers injured in Belfast riot, BBC Internet News, 5 August 2005

<sup>47</sup> *The Misrule of Law*, p. 27 – these figures relate to the period 7<sup>th</sup> to 14<sup>th</sup> July 1996. The figure was supplied to CAJ by the RUC at the time. However, in much later parliamentary questions became apparent that a further 2,163 plastic bullets were fired, presumably during this period. It is unclear whether these were fired by the army, or whether the RUC statistics had been revised.

<sup>48</sup> *Policing the Police*, p.8

<sup>49</sup> RUC Press Release, *Drumcree Figures Tell the Tale*, 20 July 1999



Stephen McConomy	19 Apr 82	Royal Anglians
Sean Downes	12 Aug 84	RUC
Keith White	14 Apr 86	RUC
Seamus Duffy	9 Aug 89	RUC

Furthermore, one regiment, the Royal Anglians, was responsible for four of those deaths.

## **THE DECREASE IN THE DEPLOYMENT OF PLASTIC BULLETS BETWEEN 1999 AND 2005**

There are a number of reasons for the recent decrease in the deployment of plastic bullets. The summer of 1996 saw very serious civil unrest, culminating in the standoff at Drumcree, which shocked the world. The highest number of plastic bullets since 1981 were fired in a single week.

One factor has undoubtedly been the growing domestic and international concern about the use of plastic bullets, as set out below. Human rights groups such as the Belfast-based Committee on the Administration of Justice (CAJ), Human Rights Watch and Amnesty International, all sent observers to monitor the marching season, and in 1997 and 1998 an unprecedented number of such observers were present in Northern Ireland. Such international scrutiny may have accounted for changes in tactics on the part of the RUC and for the decrease in the number of plastic bullets fired.

Another factor has been the relative increase in the level of unionist protest and the decrease in nationalist protest. This has been particularly marked since 1998, when for the first time the Orange Order was prevented from marching down the Garvaghy Road.

The PSNI remains an overwhelmingly Protestant police force. In 1998 92% of its officers came from the Protestant/unionist/loyalist community<sup>50</sup>. In 1996, CAJ's observers reported occasions on which RUC officers seemed unable or unwilling to intervene when loyalists were rioting or Catholics needed police assistance<sup>51</sup>. They also reported naked sectarianism on the part of some RUC officers<sup>52</sup>. On the night of 11<sup>th</sup> July that year, RUC officers were reported as having entered the casualty department at Altnagelvin Hospital in Derry and attacked a number of people, who would have been mainly nationalists, with batons. The hospital manager had to ask the RUC to leave the hospital.<sup>53</sup> On the other hand, a spokesman for the loyalist Ulster Democratic Party described the RUC as being heavy handed and "looking for trouble" on 9<sup>th</sup> July 1996<sup>54</sup>.

In more recent years not only have police officers come into confrontation with members of their own community, but they have been frequently criticised and even threatened as a result of that confrontation by community

<sup>50</sup> *A New Beginning; Policing in Northern Ireland*, p. 81 – by 1.7.2005 79% of police officers were Protestant, according to figures provided to BIRW by the PSNI

<sup>51</sup> *The Misrule of Law*, pp. 29 and 81

<sup>52</sup> *Ibid*, p. 20

<sup>53</sup> *Ibid*, p. 81

<sup>54</sup> *Ibid*, p. 80

members who were outraged that “their” police were preventing them from marching contentious routes. This has happened despite the fact that since 1998 the Parades Commission has relieved the RUC of making decisions about which marches should go ahead.

Another significant factor has been the improving climate in which civil unrest has occurred. As the ceasefires, imperfect though they are, have endured, and with strong public support for the Good Friday Agreement, sustained political efforts to reach accommodation over contentious marches has helped to defuse the situation. Although the atmosphere has been very tense indeed at times, and there have been many acts of violence including murder surrounding the marching season, from 1996 until 2004 each year saw a decrease in the level of violence compared to the previous year. The review of the guidelines for the use of plastic bullets by the Association of Chief Police Officers mentioned below must also have contributed to the RUC's greater restraint in recent years, while the setting up of the Independent Commission on Policing for Northern Ireland under the Good Friday Agreement put the RUC under the closest scrutiny it has ever experienced.

#### **THE INCREASE IN THE DEPLOYMENT OF PLASTIC BULLETS IN 2005**

There can be no doubt that the PSNI came under sustained attack in July 2005 from nationalists and in August and September 2005 from loyalists. There is also no doubt that the rioting in September 2005 was the worst in a decade and that live ammunition, petrol bombs, fireworks loaded with shrapnel and other deadly missiles were aimed at the police.

Until the Police Ombudsman's reports become available it will be difficult to tell whether the very large number of AEPs fired in September was proportionate to the threat experienced by the police. Her reports are not likely to appear quickly as she will have to prepare reports on three quarters as many firings (249) for the four days so far when plastic bullets were fired in 2005 as she has produced altogether for the period April 2001 to August 2002 (329 firings). She will not, of course, be able to comment on firings by soldiers.

The consensus among a number of reporters and photographers who were present during the September riots is that the response of the security forces was proportionate. They witnessed few injuries from plastic bullets and those they did see appeared to be relatively minor, the injured being able to walk after being hit. However, most of the journalists were kept well back behind police lines, so may not have seen everything that occurred. They all said that they heard no warnings given by police officers, but also said that there was a great deal of noise, so it would have been very difficult to hear any warnings. One photographer who was close to the action said that police officers were wearing so much protective gear that it would have been difficult for them to have made themselves heard, even if there had not been so much ambient noise.

It seems clear that the nationalist rioting in July 2005 was very largely provoked, although not of course excused, by the revocation of the license of Sean Kelly, as has been explained above.

The loyalist rioting in August was a response to their perception of searches carried out by the police as being heavy-handed.

The response to both riots by the PSNI did appear to be measured, in that only a small number (22 in July and 11 in August) AEPs were fired, although the fact that twice as many AEPs were fired against nationalists as against loyalists is troublesome in light of CAJ's observations at Drumcree about differential firing.

The roots of the loyalist rioting in September are much more complex. Whilst the ostensible reason for the protests was dissatisfaction with the Parade Commission's ruling on the route of the Whiterock Orange Order parade, after the riots loyalists claimed that poverty and deprivation in Protestant areas, which they felt were not benefiting from inward investment to the same degree as Catholic neighbourhoods. However, one of the reasons for that is that loyalist paramilitaries continue to intimidate contractors, demanding "protection" money, deterring them from building new facilities and creaming profit from money intended to improve loyalist areas.<sup>55</sup> A more deep-seated impetus for the violence lay in the underlying political situation. The IRA were about to de-commission their remaining weapons and dedicate themselves to a purely political strategy. The ceasefire of the Ulster Volunteer Force, one of the main loyalist paramilitary groups, was coming under increasing criticism, and, indeed, on 14<sup>th</sup> September the Secretary of State declared that he no longer recognised their ceasefire. One interpretation of the violence could be that loyalists were anxious to make a show of strength as a warning to the government not to underestimate their opposition to political dialogue with Sinn Féin. The UVF may also have been sending a warning specifically to the PSNI, who have been attempting to cut collusive links with paramilitary informers, not to forget who their "friends" are.

By the same token, the heavy firing with which the police responded to the loyalist rioting may have been intended to show that they are capable of controlling the community with which their links have been too close in the past, and that they are able to act independently. On the other hand, they may merely have been acting in self defence.

## **THE GUIDELINES FOR USING PLASTIC BULLETS**

Until August 1997, the guidelines for the use of plastic bullets were not publicly available. When they were finally placed in the public domain, it became apparent that the guidelines issued to the RUC and those issued to the army were not the same, despite the fact that both arms of the security forces frequently fired plastic bullets together at the same event.

Although plastic bullets had never been used in England and Wales at that time, guidelines for their use there were much more restrictive than those pertaining until very recently in Northern Ireland. In England and Wales, plastic bullets could only be fired to protect life. In Northern Ireland, they could be fired to protect life, to protect property, to preserve the peace, or for the prevention and detection of crime. In England and Wales, plastic

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<sup>55</sup> *Parade riots point to deeper unrest*, by Mark Davenport, BBC internet news, 11 September 2005

bullets could only be deployed on the authority of a senior police officer, whereas in Northern Ireland individual officers carrying riot guns could decide when to open fire. In England and Wales, warnings were to be given before opening fire unless circumstances dictated otherwise, but in Northern Ireland warnings only had to be given if circumstances permitted. Independent observers reported that in practice warnings were not given before opening fire in Northern Ireland.<sup>56</sup>

Thus in Northern Ireland, where plastic bullets are used and have caused 17 deaths and many serious injuries, the restrictions on their use were far less robust than they were in England and Wales, where plastic bullets were not at that time deployed.

On 1<sup>st</sup> August 1999, following a review of the use of plastic bullets by the Association of Chief Police Officers, new rules were brought in that applied across the board. From then on, plastic bullets could only be fired in order to protect life or to prevent injury of members of the public, police officers, or members of the emergency services<sup>57</sup>. The decision to use plastic bullets was to be taken by a very senior police officer and individual officers were under the command of a baton gun commander. Warnings must always be given unless the circumstances preclude it. Plastic bullets were to be treated in the same way as live ammunition and would only be used by specially trained officers. They could only be used where other methods had been tried and had failed, or would not be likely to succeed if tried.

Although this tightening of the rules was welcome, it was no substitute for the banning of plastic bullets altogether. Moreover, it opened up the way for this lethal weapon to be deployed in England and Wales as well as Northern Ireland, only months after the United Nations recommended the abolition of their use (please see below). In fact, plastic bullets have been fired on many occasions in England and Wales, although only in one-on-one situations, rather than being used for crowd control.

There was another worrying aspect of the new guidelines: they defined the lower part of the body as “below the rib cage”. This does not take account of the medical evidence quoted above, which suggests that injuries to the abdomen can be life-threatening.

The PSNI refused a request under the Freedom of Information Act from BIRW for a copy of the guidelines for firing AEPs by the police on the grounds, among others, that they would soon be available on the website of the Association of Chief Police Officers (ACPO)<sup>58</sup>. Although the guidelines were not yet available on their website, ACPO kindly supplied the guidelines as amended on 16<sup>th</sup> May 2005. The preface to the guidelines makes it abundantly clear that the AEP is not an ideal means of crowd control:

“1.5 The AEP has not been designed for use as a crowd control technology but has been designed for use as a less lethal option in situations where officers are faced with individual aggressors whether such aggressors are acting on their own or as part of a group.

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<sup>56</sup> *Policing the Police*, p.9

<sup>57</sup> Fire fighters, ambulance personnel etc

<sup>58</sup> [www.Westmercia.police.uk](http://www.Westmercia.police.uk)

- 1.6 The AEP may be deployed in a variety of operational situations, however the objective will remain the same. The AEP is intended for use as an accurate and discriminating projectile, designed to be fired at individual aggressors.
- 1.7 In the event of it becoming necessary to use an AEP in a public order situation this must be restricted to use against clearly identified individuals who are presenting a threat which must be countered and other tactical options available for countering the threat posed are considered inappropriate in the circumstances.
- 1.8 It must be recognised that the use of a kinetic energy device in a situation of public disorder may have a profound impact on crowd dynamics with implications for public safety and order."<sup>59</sup>

The Policing Minister for the UK, Caroline Flint stated when AEPs were introduced that the "AEP will be used only in accordance with guidance which is intended to provide authorised firers with a less lethal option in situations where they are faced with individual aggressors whether such aggressors are acting on their own or as part of a group. It is not a crowd control technology; it is designed to be used against specific individuals in a variety of scenarios."<sup>60</sup> Indeed baton round usage elsewhere in the UK has as far as we know been solely against individuals. In her annual report, the Police Ombudsman argues for the deployment of AEP/baton round in cases where individuals cannot be contained by CS spray, and where, in Northern Ireland, there would otherwise be recourse to lethal force.<sup>61</sup>

It is difficult to believe that in a situation where around 450 AEPs are fired on a single night, as happened on 10th September 2005, each and every one was fired with discrimination.

The guidelines provide that AEPs may only be fired in situations of serious public disorder

"...where their use is judged to be necessary to reduce a serious risk of:

(i) *loss of life or serious injury or;*

(ii) *substantial and serious damage to property where there is, or is judged to be, a sufficiently serious risk of loss of life or serious injury to justify their use.*"<sup>62</sup> [their emphasis]

In relation to aiming AEPs, the guidance stipulates:

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<sup>59</sup> ACPO Attenuating Energy Projectile (AEP) Guidance, amended 16<sup>th</sup> May 2005

<sup>60</sup> *House of Commons Hansard Written Ministerial Statements* 04.04.05.

[http://www.parliament.the-stationery-](http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmhansrd/cm050404/wmstext/50404m04.htm)

[office.co.uk/pa/cm200405/cmhansrd/cm050404/wmstext/50404m04.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmhansrd/cm050404/wmstext/50404m04.htm).

<sup>61</sup> *Annual Report and Statement of Accounts, April 2004-March 2005*. Police Ombudsman

for Northern Ireland. P. 14.

<http://www.policeombudsman.org/publicationsuploads/Annual%20Report%202004-5.pdf>

<sup>62</sup> *Ibid*, paragraph 1.15

“The AEP should be aimed to strike directly (i.e. without bouncing) the lower part of the subject’s body i.e. below the rib cage. Officers are trained to use the belt-buckle area as the point of aim, at all ranges thus mitigating against upper body hits.”<sup>63</sup>

Unfortunately, this guidance does not mitigate the possibility of striking the abdomen or the genitals.

As regards the range at which the AEP should be fired, the guidelines say:

“Unless there is a serious and immediate risk to life, which cannot otherwise be countered, use at under one metre or aiming the weapon to strike a higher part of the body at any range is prohibited. In these circumstances the risk of serious and even fatal injuries is increased and the firer must be able to justify the increased use of force.”<sup>64</sup>

A range of only one metre is exceptionally close, and must increase significantly the potential to cause injury. Considering that the recommended range for the predecessor bullet was 20 yards, such a short range gives rise to considerable concern, especially as the AEP is designed to have the same mass and muzzle velocity as its predecessor, the L21A1<sup>65</sup>.

The guidelines specifically recognise the fact that AEPs can cause fatalities<sup>66</sup> and that they can ricochet and thus have the potential to harm others apart from the intended target<sup>67</sup>. The guidelines stress that:

“The initial discharge and any subsequent discharge must be proportionate, lawful, appropriate, necessary and non-discriminate, in all the circumstances. Ultimately, the decision to discharge the AEP is an individual one for which the officer will be accountable...”<sup>68</sup>

The guidance contains a section on aftercare, which says that early medical attention should be provided for anyone struck by an AEP<sup>69</sup>.

The guidance prohibits the firing of AEPs from a moving vehicle<sup>70</sup>.

The Ministry of Defence, to its credit, responded promptly to our request for their guidelines for soldiers firing AEPs<sup>71</sup>. Unfortunately, however, they do not compare well with the ACPO guidelines, which are far more detailed.

The army guidelines assume throughout that AEPs are “public order control equipment”<sup>72</sup>. While the guidelines stress that soldiers must use no more force

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<sup>63</sup> Ibid, paragraph 1.17

<sup>64</sup> Ibid, paragraph 1.18

<sup>65</sup> *Statement on the comparative injury potential of the attenuating energy projectile (AEP) L60A1, and the L21A1 baton round*, DOMILL, April 2005, paragraph 9c

<sup>66</sup> ACPO Attenuating Energy Projectile (AEP) Guidance, amended 16<sup>th</sup> May 2005, paragraph 4.1

<sup>67</sup> Ibid, paragraph 7.5

<sup>68</sup> Ibid, paragraph 9.2

<sup>69</sup> Ibid, section 11

<sup>70</sup> Ibid, paragraph 9.5

<sup>71</sup> Available at [http://www.mod.uk/linked\\_files/publications/foi/harmonisation/aepguidance.pdf](http://www.mod.uk/linked_files/publications/foi/harmonisation/aepguidance.pdf)

<sup>72</sup> Card D (NI) – Guidance for Service Personnel authorised to use public order control equipment in Northern Ireland, April 2005

than is absolutely necessary<sup>73</sup>, and that lethal force must not be used other than for the protection of human life<sup>74</sup>, there is no suggestion, as in the ACPO guidelines, that AEPs are a less than ideal means of crowd control.

Although the army guidelines say that AEPs must be aimed at selected individuals and not fired indiscriminately, they define the lower part of the body as “below the ribcage”, which could well be interpreted by soldiers as being higher than the “belt buckle area” mentioned in the ACPO guidelines. The “below the ribcage” criterion raises the same concerns about the potential for serious abdominal injury as ACPO’s guidance, all the more so because of the height issue.<sup>75</sup>

The army guidance also gives the shortest permitted range as one metre<sup>76</sup>, which gives rise to same concerns expressed about range in relation to the ACPO guidelines.

There is no mention of the special risk that AEPs pose if fired at children, although the guidelines do provide for medical assistance to be provided to casualties as soon as possible<sup>77</sup>. Nor is there any mention whatsoever of human rights, or of not firing from a moving vehicle.

Thus the same problem as existed with the predecessor plastic bullet has been replicated. The army and the police, while working together and often firing AEPs together in the same conditions, work under very different guidelines. It is perhaps not surprising that the army has been responsible for most of the fatalities and some of the more serious recent injuries caused by plastic bullets.

## **THE PATTEN COMMISSION AND PLASTIC BULLETS**

The Report of the Independent Commission on Policing for Northern Ireland (the Patten Commission) had this to say about the use of plastic bullets<sup>78</sup>:

“9.12 The most controversial aspect of public order policing in Northern Ireland has been the weaponry used by the police, in particular plastic baton rounds. These were introduced into service in the 1970s, replacing the earlier rubber bullets. Since 1981, a total of 41,657 have been discharged by the police, and 14,572 by the army. 11 deaths have been attributed to PBRs since 1981 (and 5 before that), and 615 injuries. The most recent fatality was in 1989, but the issue of PBRs remains highly controversial...”

9.14 In view of the fatalities and serious injuries resulting from PBRs, and the controversy caused by their extensive use, we are surprised and concerned that the government, the Police Authority and the RUC have collectively failed to invest more time and money in a search for an acceptable alternative...

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<sup>73</sup> Ibid, paragraph 1

<sup>74</sup> Ibid, paragraph 2

<sup>75</sup> Ibid, paragraph 11

<sup>76</sup> Ibid

<sup>77</sup> Ibid, paragraph 12

<sup>78</sup> *A New Beginning; Policing in Northern Ireland*, p. 54

9.15 In common with many groups that gave us submissions, we would like to see the use of PBRs discontinued as soon as possible. All of us began our work wanting to be able to recommend that they be dispensed with straight away. But we do not wish to see a situation in which the police would have no choice but to resort to live rounds, sooner than would be the case today. For as long as the community in Northern Ireland contains elements prepared to use lethal weapons against the police, such situations would certainly arise. Use of live rounds would lead to more fatalities and serious injuries caused by police action – the very opposite of what we seek to achieve. An alternative to the PBR must therefore be sought urgently.”

They made the following recommendations:

“69. An immediate and substantial investment should be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the PBR [para. 9.15].

70. The police should be equipped with a broader range of public order equipment than the RUC currently possess, so that a commander has a number of options at his or her disposal which might reduce reliance on, or defer resort to, the PBR [para. 9.16].”

This was a disappointing stance. To the best of our knowledge, plastic bullets have never been deployed for riot control in England and Wales, despite the occurrence over the years of a number of serious and violent riots, including race riots and riots against the poll tax and against capitalism. English police forces have been able to police these riots without recourse to plastic bullets, and - although police officers, demonstrators and members of the public have all been injured on occasion – without loss of life or anything like the number of injuries caused by plastic bullets. It is simply not the case that the RUC, or nowadays the PSNI, would have had no other means at its disposal than hand-held batons or live ammunition were it to abandon the use of plastic bullets. Indeed, its claim to have fired only one plastic bullet during the week of Drumcree in 1999 shows that the RUC was capable of policing some situations of serious public unrest without resorting to plastic bullets, as does the example set by Derry.

Although the Northern Ireland Office set up a working party to look into alternatives to plastic bullets, the outcome of its research has been disappointing. In February 2004 Jane Kennedy MP, the then Minister for State responsible for security matters, admitted:

“It is our judgement that there is still no commercially available product that is an acceptable, more safe and effective alternative to the current baton round although we will continue to monitor all developments.”<sup>79</sup>

The Patten Commission make the following further recommendations in relation to the deployment of plastic bullets:

“71. The use of PBRs should be subject to the same procedures for deployment, use and reporting as apply in the rest of the United Kingdom. Their use should be confined to the smallest necessary number of specially trained officers, who should be trained to think of

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<sup>79</sup> Conference To Discuss Alternatives To Baton Rounds, NIO press release, 5 February 2004



the weapon in the same way as they would think of a firearm, that is as a weapon which is potentially lethal. Use of PBRs should in the first instance require the authorisation of a district commander. This should be justified in a report to the Policing Board, which should be copied to the Police Ombudsman. Wherever possible, video camera recordings should be made of incidents in which the use of PBRs is authorised [para.9.17]."

74. Guidance governing the deployment and use of PBRs should be soundly based in law, clearly expressed and readily available as public documents [para.9.20]."

These recommendations were partially met by the introduction of new guidelines for the deployment of plastic bullets on 1<sup>st</sup> August 1999. However, the Patten Commission went further than those guidelines in two respects. First, it recommended that reports on authorisations for the firing of plastic bullets should be made to the Policing Board and copied to the Police Ombudsman. The 1999 guidelines did not require any such reports. However, they did say that in England and Wales a report should be sent by the Chief Constable to the Home Secretary on any incident in which plastic bullets had been fired, but they did not require such reports in Northern Ireland. The ACPO guidelines on firing AEPs, introduced in May 2005, have finally implemented this recommendation in full, and the Police Ombudsman for Northern Ireland is automatically notified of and investigates every firing of plastic bullets by police officers. Secondly, the Patten Commission recommended the video-recording of incidents where plastic bullets are fired, which is not provided for in either the 1999 or the 2005 guidelines.

On the question of accountability, the Patten Commission makes an important point:

"9.18 The police must be fully accountable for public order policing as for any other aspect of their work. Several submissions suggested to us that police in riot gear should be capable of being identified. We agree with this and we recommend that officers' identification numbers should be clearly visible on their protective clothing, just as they should be on regular uniforms."

In their 1996 report, CAJ drew attention to the practice of RUC officers in riot gear wearing no identification numbers.<sup>80</sup> On 6<sup>th</sup> July 1997, solicitor Rosemary Nelson, who was murdered in March 1999, was assaulted by a number of RUC officers on the Garvaghy Road as she tried to represent the interests of the Garvaghy Road Residents Association. She gave the following chilling account of her experience<sup>81</sup>:

"I went up to the police lines and asked, 'Could somebody please tell me what's going on here?' One of them grabbed me by the arm and took me into them, right into the circle [of riot shields] and said, 'Rosemary, you Fenian fucker', and they threw me about a bit. I said, 'Can I have your number please?' Somebody else said, 'F... off.' The difficulty there was, because of the way they were dressed, there were no numbers distinguishable, you just couldn't see any numbers, and

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<sup>80</sup> *The Misrule of Law*, p. 59

<sup>81</sup> Interview with Rosemary Nelson, *Policing the Police: The Video*, Committee on the Administration of Justice and Witness Program of the Lawyers Committee for Human Rights, 1997

they were wearing balaclavas. I can't recall ever being so frightened in my life."

Since then, the RUC has taken to wearing identification numbers, and to marking police vehicles more clearly. In the riots of September 2005, PSNI officers in riot gear had identification numbers clearly displayed on their riot helmets.

Finally, the Patten Commission makes another recommendation about accountability:

"9.19 We recommend that the Policing Board and, as appropriate, the Police Ombudsman should actively monitor police performance in public order situations, and if necessary seek reports from the Chief Constable and follow up those reports if they wish."

This is a welcome recommendation. It is important that monitoring public order policing is not left solely to NGOs, but that agencies with responsibility for policing standards should take this on board. The Northern Ireland Policing Board has asked its human rights advisors to monitor the policing of certain major incidents, such as the rioting in Ardoyne on 12<sup>th</sup> July 2004<sup>82</sup> and that which took place in September 2005, and the Police Ombudsman now monitors all plastic bullet firings by police officers.

### **SCRUTINY BY THE POLICE OMBUDSMAN OF THE FIRING OF PLASTIC BULLETS BY THE POLICE**

In 2000 the Office of the Police Ombudsman of Northern Ireland was established to carry out independent investigations into complaints against the police. Since 24<sup>th</sup> April 2001, under a protocol agreed with the Chief Constable, she has examined every discharge of any weapon by PSNI officers. She has produced 27 reports on the firing of plastic bullets, which are summarised below:

DATE	LOCATION	INCIDENT	ROUNDS FIRED	INJURIES	POLICE OMBUDSMAN'S FINDINGS
20 + 21.8.2002	Albertbridge Road, Short Strand, east Belfast	interface riot	29	10 hit in leg(s) 3 hit in groin 5 hit in thigh 1 hit in knee	use of baton rounds lawful, justified and proportionate
10.8.2002	Mountpottinger Road, east Belfast	interface tension	11	none	fully justified and proportionate; lack of verbal warning justified because police officer knocked unconscious
12.7.2002	Springfield Road, west Belfast	nationalist protest against Orange Order parade	30	not possible to ascertain	police response both controlled and proportionate, but Police Ombudsman made following

<sup>82</sup> *A report on the policing of the Ardoyne Parades, 12 July 2004*, Northern Ireland Policing Board, 4 November 2004

					<p>recommendations:</p> <ul style="list-style-type: none"> <li>• The necessity of giving a warning should not be ignored.</li> <li>• The report noted that baton gunners had not been allocated assistants to aid in recording details of baton gun discharges, despite an instruction to do so.</li> <li>• The Police Ombudsman reiterated a previous recommendation that the officer accompanying the baton gunner should be equipped or assisted by either video or audio equipment to enhance the evidential value of the role.</li> </ul>
7.7.2002	Drumcree Bridge, Portadown	violence against police by those protesting at curtailment of Orange Order march	3	1 hit in arm 2 hit in leg	<p>police exercised considerable restraint; Police Ombudsman made the following recommendations:</p> <ul style="list-style-type: none"> <li>• During major event planning, the PSNI should designate an officer with responsibility for collating the post-event documentation required by her office in connection with its investigations.</li> <li>• maximum effort should be made to video contentious events.</li> <li>• The requirement</li> </ul>

					for baton gunners to be supported by assistants, in accordance with PSNI instructions, should be adhered to.
13.6.2002	Albertbridge Road, Short Strand, east Belfast	severe interface rioting	1	one unspecified injury, which led to a complaint to the Police Ombudsman, which she was unable to investigate because the plastic bullet was fired by a soldier	fully justified and proportionate in the circumstances
9.6.2002	Donegall Pass, south Belfast	serious public disorder at interface	2	1 hit in thigh	necessary and proportionate; Police Ombudsman made the following recommendations: <ul style="list-style-type: none"> <li>• The PSNI should conduct a review to address deficiencies in its training records system, to ensure that vital training courses are not omitted from officers' records.</li> <li>• That police should accurately record the number of baton rounds issued to gunners.</li> </ul>
3 + 4.6.2002	Lower Newtownards area, east Belfast	intense rioting	60	45 persons hit	fully justified
2.6.2002	Short Strand, east Belfast	attack on nationalists and police by loyalists	1	1 hit in thigh	proportionate and justified, although no warning given
25.5.2002	Garvaghy Road, Portadown	nationalist rioting in response to returning	2	1 hit in leg	proportionate, necessary and justified

		Junior Orange Lodge marchers			
14.5.2002	Short Strand, east Belfast	violence against the police following a search operation	3 (the army fired another 10)	1 hit in thigh 1 hit in knee	no evidence of police misconduct, other than a police landrover being driven dangerously; Police Ombudsman made the following recommendations: <ul style="list-style-type: none"> <li>• That the police should consider whether all police vehicles used for general patrol and public order situations should have markings on their roof to make them identifiable from the air.</li> <li>• That the video footage of the Land Rover being driven towards people on the footpath should be passed to the PSNI's training branch for their consideration.</li> <li>• That the number of baton rounds being issued to officers should be accurately recorded.</li> <li>• The Police Ombudsman reiterated a previous recommendation that police should take evidential video footage of baton round discharges.</li> </ul>
4.5.2002	north Belfast	violence following a Celtic/Rangers	33	7 hit in thigh 3 hit in groin 2 lower body	no evidence of police misconduct; firing

		football match		1 hit in hip 2 hit in ankle 4 hit in leg 1 hit in knee 1 hit in arm 1 hit in chest 1 hit in buttock	at man's chest outside the guidelines but justified in the circumstances
21.4.2002	Ardoyne, north Belfast	interface disorder	1 (the army fired another 2)	1 hit in thigh (army claimed 1 hit) 12 year old hit by ricochet from round fired by army	justified and proportionate; however, one police officer's authorisation to fire the weapon he used had expired; the Police Ombudsman made the following recommendations: <ul style="list-style-type: none"> <li>• The Police Ombudsman recommended that the baton gunner should be informally disciplined for carrying and using the weapon when not authorised to do so. She also recommended that the gunner's superior officer and the armoury officer who issued the weapon should also be informally disciplined for issuing a weapon to an unauthorised officer.</li> <li>• That all baton gunners be issued with authorisation cards, which should be presented before baton guns or rounds are issued.</li> <li>• That officers discharging baton guns from</li> </ul>

					vehicles are always accompanied by another officer to act as observer/ evidence gatherer.
3.4.2002	Limestone Road/Tiger's Bay, north Belfast	severe loyalist rioting	18	11 persons hit	justifiable and proportionate in the circumstances; the Police Ombudsman's Executive Director made the following recommendation: <ul style="list-style-type: none"> <li>• Police were reminded of the need to follow the correct procedure when informing the Police Ombudsman's office about the discharge of baton rounds.</li> </ul>
2.4.2002	Lawther Court, north Belfast	serious rioting	1	none	justified and proportionate; the Police Ombudsman's Executive Director made the following recommendations: <ul style="list-style-type: none"> <li>• Officers should make a written record of the timing of public warnings issued before the deployment of baton rounds, as well as of the wording used.</li> <li>• PSNI officers in supervisor roles should be reminded to contact the Police Ombudsman's On Duty Senior Investigating Officer immediately after the</li> </ul>

					discharge of a baton round.
30.3.2002	North Queen Street, central Belfast	severe nationalist rioting	4	1 hit in foot 1 hit in thigh a young girl suffered a leg injury	use of force was proportionate; the injury to the young girl's leg was caused by a ricochet from one of two rounds which missed their intended target
10.1.2002	Ardoyne, north Belfast	picket of Holy Cross primary school by loyalists	29	not possible to ascertain	fully justified and proportionate
9.1.2002	Ardoyne, north Belfast	picket of Holy Cross primary school by loyalists	9	1 hit in leg 1 hit in thigh 1 hit in ankle (outcome of other six round unknown)	fully justified and proportionate
9.12.2001	Crossmaglen	nationalist demilitarisation protest	2	1 hit in upper thigh/waist	use of force was proportionate but sufficient resources may not have been deployed by the police
27.9.2001	Cambrai Street, Shankill, west Belfast	serious loyalist disorder	7	not possible to ascertain	lawful, justified and proportionate
26.9.2001	Cambrai Street, Shankill, west Belfast	serious loyalist rioting	10	not possible to ascertain	proportionate
26.7.2001	Ardoyne, north Belfast	interface riot	3	3 persons hit	fully justified and proportionate
12.7.2001	Corcrair Estate and Edgarstown, Portadown	rioting	5	5 persons hit: 1 broken leg, 1 bruised leg (both these persons complained)	fully justified and proportionate; Police Ombudsman did not uphold the two complaints from injured men
12.7.2001	Ardoyne/Crumlin Road, north Belfast	rioting during protest against Orange Order parade	46	not possible to ascertain	lawful, justified and proportionate
26.6.2001	Corcrair Road, Portadown	loyalist bonfire	1	none	fully justified and proportionate
20.6.2001	Ardoyne, north Belfast	picket of Holy Cross primary school by loyalists	11	3 persons hit	fully justified and proportionate
26.5.2001	Garvaghy Road, Portadown	nationalist protest following Orange Order	6	5 persons hit	lawful, justified and proportionate; The Police Ombudsman



		march			made the following recommendation: <ul style="list-style-type: none"> <li>• The PSNI must appreciate the importance of the early completion of notes of an incident and baton round reports, along with their early submission to the Police Ombudsman.</li> </ul>
24.4.2001	Lurgan	rioting during army search	1	none	fully justified and proportionate, but the planning of the operation had grossly underestimated the time needed, which was a factor in the outbreak of serious public disorder

The Police Ombudsman has yet to produce her reports on the firing by the police in July, August and September 2005 of 249 AEPs. It has been reported that she has received more than 50 complaints from both loyalists (about alleged heavy-handedness) and nationalists (about alleged inaction over loyalist roadblocks) concerning policing of the riots<sup>83</sup>.

As can be seen from the summary of her reports, although the Police Ombudsman has on occasion made recommendations for better police practice, she has found every single firing that she has examined to have been lawful, proportionate, and justified.

The Police Ombudsman's reports cover 329 plastic bullets fired by the PSNI between 24<sup>th</sup> April 2001 and 21<sup>st</sup> August 2002, which was in fact the total number of plastic bullets fired by police during those two years, which suggests the PSNI did not fire any between 1<sup>st</sup> January and 23<sup>rd</sup> April 2001.

The solicitors' firm Kevin R Winters & Co reported injuries suffered by their clients being hit by plastic bullets on 14<sup>th</sup> June 2002, 28<sup>th</sup> August 2002, and 29<sup>th</sup> August 2002, but none of the Police Ombudsman's reports cover incidents on these dates. On 14<sup>th</sup> June 2002, Kevin Winters reports a schoolboy struck on the leg and taken to hospital. The Police Ombudsman has no record of any firing. On 28<sup>th</sup> August 2002 Kevin Winters records five injuries involving five bullets. One youth was struck twice in the back and another male was struck in the shoulder while going to the assistance of the youth. Another man was hit in the arm and another was hit in the upper rib cage and ended up on a

<sup>83</sup> *Watchdog investigates riot claims*, BBC internet news, 29 September 2005

ventilator. A fifth male was hit in the leg. On 29<sup>th</sup> August 2002 a male was struck in the foot, according to Kevin Winters' instructions. The Police Ombudsman has no record of firings on either of these dates. Since the Police Ombudsman has not reported on these incidents, it can only be assumed that the plastic bullets were fired by soldiers, over whom she has no jurisdiction.

Kevin Winters' instructions also include shootings on two other occasions which were not mentioned by the Police Ombudsman. On 14<sup>th</sup> May 2002, the Police Ombudsman records that the PSNI fired three plastic bullets and the army fired another ten. She reports that the police hit two people, one in the thigh and the other in the knee. The army must have caused the other seven injuries reported to Kevin Winters. Four of these shots hit their victims above the waist. One woman suffered a shattered elbow, a youth worker who was trying to mediate had his arm broken in three places, another male was hit on the chin and a sixteen-year-old boy was hit on the breast bone and coughed up blood. On 13<sup>th</sup> June 2002, Kevin Winters & Co reported four persons hit, one of them twice. Four of the bullets struck their targets on the legs (one woman suffered a broken leg), and one struck the upper arm. The Police Ombudsman did report on the events on that date, but recorded only one unspecified injury, caused by the army.

The Police Ombudsman received 20 complaints about the firing of plastic bullets between 12 July 2001 and 13 June 2002. All but one was categorised by her office as "oppressive behaviour"; the other being classified as "other". The twenty complaints concerned ten separate incidents. Six of these took place in north Belfast, three in east Belfast, and one in Portadown. None of the complaints was upheld. The full details are as follows<sup>84</sup>:

INCIDENT DATE	INCIDENT LOCATION	NUMBER OF COMPLAINTS	ALLEGATION TYPE	OUTCOME	OUTCOME - EXPLANATION
12-Jul-01	Corcrair Road, Portadown	1	Oppressive Behaviour	Closed - Disproportionate	Where the effort and resources involved in pursuing a complaint is disproportionate eg. A complainant alleges he was pushed but he has no injuries, no witnesses and is unable to identify the officers concerned.
		1	Oppressive Behaviour	Closed - Disproportionate	See above
		1	Oppressive Behaviour	Closed - Awaiting Solicitor Contact > Criminal	Where a complainant or his legal representative

<sup>84</sup>

Letter from Police Ombudsman to BIRW, 18 September 2005

				Proceedings	indicate that they are not prepared to co-operate pending the disposal of criminal proceedings
12-Jul-01	Estoril Pk., North Belfast	1	Oppressive Behaviour	Reg 24 - Further Steps Not Indicated	Where a complainant fails to respond to preliminary enquiries initiated by the complaints officer/an invitation to participate in the informal resolution process/a complainant indicates verbally that he wishes to withdraw a complaint but fails to make the required signed withdrawal statement
		1	Oppressive Behaviour	Reg 24 - Further Steps Not Indicated	
		1	Oppressive Behaviour	Reg 24 - Further Steps Not Indicated	
		1	Oppressive Behaviour	Reg 24 - Further Steps Not Indicated	Where an investigation has taken place and the Investigation Officer is satisfied there is insufficient evidence to substantiate the allegations made against the police
26-Jul-01	Ardoyne, North Belfast	1	Oppressive Behaviour	Closed - Not Substantiated- no further action	See above
		1	Oppressive Behaviour	Closed - Not Substantiated- no further action	See above
26-Sep-01	Cambrai St., North Belfast	1	Oppressive Behaviour	Closed - Not Substantiated- no further action	See above
10-Jan-02	Brompton Pk., North Belfast	1	Oppressive Behaviour	Closed - Non Co-operation	See above
30-Mar-02	North Queen St.,	1	Other	Closed - Incapable of	In view of no witnesses, a

	North Belfast			Investigation	review of the video footage, a review of evidence relating to the investigation and there are no other lines of enquiry to pursue
02-Apr-02	Lawther Ct., North Belfast	1	Oppressive Behaviour	Closed - Not Substantiated- no further action	See above
14-May-02	Short Strand, East Belfast	1	Oppressive Behaviour	Closed - Ill-Founded	Where it becomes clear either during preliminary enquiries that the complaint is without foundation.
		1	Oppressive Behaviour	Closed - Not Substantiated- no further action	See above
		1	Oppressive Behaviour	Reg 24 - Further Steps Not Indicated	See above
03-Jun-02	Cluan Pl., East Belfast	1	Oppressive Behaviour	Closed - Non Co-operation	The failure of a complainant to co-operate or provide reasonable assistance for the purpose of an investigation makes a meaningful enquiry impracticable.
		1	Oppressive Behaviour	Closed - Non Co-operation	
		1	Oppressive Behaviour	Closed - Non Co-operation	
13-Jun-02	Albertbridge Rd., East Belfast	1	Oppressive Behaviour	Closed - Ill-Founded	See above
	<b>Total complaints</b>	<b>20</b>			

A risk run by anyone who has been hit by a plastic bullet is that he or she will be accused of rioting. This tends to deter people from making complaints, even if their complaints are well-founded. Another deterrent is the fact that any statement taken from a complainant by the Police Ombudsman will be passed to the Crown should the complainant sue for damages, or to the DPP should the complainant be involved in any criminal proceedings, and may be used to cross-examine the complainant. For this reason, some solicitors

advise their clients to refuse to supply statements to the Ombudsman. It is not helpful if people with genuine complaints about the firing of plastic bullets are deterred from complaining to the Police Ombudsman. It deprives complainants of their rights and the Police Ombudsman of a true picture of the situation. BIRW is struck by the mismatch between the reports of serious injuries in some cases, the uncritical approval by the Police Ombudsman of each and every firing by police officers, and her failure to uphold a single complaint. This discrepancy may not be her fault, but the system as a whole is clearly not working as it should, and is not assisted by the Police Ombudsman's inability to scrutinise firings of plastic bullets by soldiers. If necessary, the rules of evidence should be changed so that people's complaints to the Police Ombudsman do not have the potential to be to their disadvantage when they seek redress in the courts.

### **SCRUTINY BY THE INDEPENDENT ASSESSOR OF MILITARY COMPLAINTS PROCEDURES OF THE FIRING OF PLASTIC BULLETS BY THE ARMY**

British Irish RIGHTS WATCH is of the view that, since the army acts in support of the police in Northern Ireland, and since the decision to deploy plastic bullets is taken by the police, any firing of plastic bullets by soldiers should be capable of investigation by the Police Ombudsman. The Police Ombudsman herself has expressed concern about her inability to investigate army firing<sup>85</sup>.

However, the government has been reluctant to allow her to investigate the army's use of plastic bullets. Instead, following discussions with the General officer Commanding Northern Ireland, it was agreed that the Independent Assessor of Military Complaints Procedures in Northern Ireland would carry out a review of the military's use of plastic bullets during the period 1<sup>st</sup> January 2001 to 31<sup>st</sup> October 2002. According to his report, the army fired 102 plastic bullets during this period, compared to 346 fired by the police<sup>86</sup>. He found that all 102 rounds discharged by the army were fired within the guidelines<sup>87</sup>.

However, he recommended the following changes to the guidelines:

- “1. Experienced evidence-gathering teams from the RMP [Royal Military Police], using video cameras, should be used when rioting is anticipated. (Such teams have not normally been deployed before.) This use of video would augment the statements justifying the use of Baton Rounds and may help with prosecution of offenders.
2. Soldiers who fire Baton Rounds should be interviewed before going on planned leave in order to capture their fullest recollection while the incident is still fresh in their mind.
3. I recommend that in paragraph 5 of the Guidelines the final sentence: *'This may include dispersing a violent crowd posing a risk to life by singling out perceived ringleaders and troublemakers'* be removed.

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<sup>85</sup> O'Loan raises concerns, by Bimpe Fatogun, *Irish News*, 15 June 2002

<sup>86</sup> A Review of Military use of Baton Rounds in Northern Ireland, Independent Assessor of Military Complaints Procedures in Northern Ireland, 10 December 2002, Annexes 2 and 3

<sup>87</sup> *Ibid*, p. 38.

4. Also at paragraph 5 the phrase '*under their protection from physical violence*' be retermed '*under their protection from serious physical violence*'.
5. Whilst recognising the different command and control systems between military and Police, and indeed the differences in operational methods, I would urge that the guidelines for the use of Baton Rounds issued by the MOD [Ministry of Defence] be developed in tandem with those of ACPO to achieve mutual best practice."

He recommended that the first four of these recommendations be implemented immediately and the fifth be dealt with as soon as possible.<sup>88</sup>

In his 2003 report, the Independent Assessor reported that his fifth recommendation had been implemented and new guidelines "in tandem" with those of ACPO had been produced<sup>89</sup>. However, this is far from being the case. The Ministry of Defence's guidelines for firing AEPs<sup>90</sup>, are radically different from, and far less adequate than, the ACPO guidelines, as has been explained above. Only the third of the Independent Assessor's recommendations, removing permission to target ringleaders, has been adopted. Furthermore, BIRW understands that the Independent Assessor has not been allowed to monitor the firing of AEPs by soldiers in 2005, despite the fact that they have fired more plastic bullets than the PSNI. The army's use of plastic bullets is thus under no effective, independent scrutiny at all.

## **DOMESTIC AND INTERNATIONAL LAW ON THE USE OF PLASTIC BULLETS**

The use of lethal force by the security forces in Northern Ireland was governed until October 2000 by s. 3(1) of the Criminal Law Act (Northern Ireland) 1967, which said that any person is entitled to use

"such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or of persons unlawfully at large".

The domestic law compared unfavourably with Article 2 of the European Convention on Human Rights, by which the United Kingdom is bound, which permits only the use of such force as is 'absolutely necessary' for the purposes of defending a person from violence, arresting a suspect or preventing an escape or quelling a riot or insurrection. [our emphasis]

In October 2000, the Human Rights Act 1998 came into force. It gave most of the rights conferred by the European Convention of Human Rights<sup>91</sup>, including Article 2, effect in domestic law, but this effect only dates from the coming into force of the Human Rights Act and is not retrospective<sup>92</sup>.

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<sup>88</sup> Ibid, p. 39

<sup>89</sup> *Eleventh Annual Report 1 January 2003 to 31 December 2003*, Independent Assessor of Military Complaints Procedures in Northern Ireland, p.45

<sup>90</sup> Card D (NI) – Guidance for Service Personnel authorised to use public order control equipment in Northern Ireland, April 2005

<sup>91</sup> Except Article 13, which bestows the right to an effective remedy

<sup>92</sup> *In re McKerr (AP) (Respondent) (Northern Ireland)*, [2004] UKHL 12 – this question is still active before the courts (see, for example, *Hurst [2005] EWCA 890*, which held that held that the requirement of s. 3 of the Human Rights Act 1998 to read and give effect to all legislation, so far as possible, in a way that is compatible with the Convention rights listed in the Act whenever that

Despite the fact that the guidelines for the use of plastic bullets have been flouted on many occasions, no member of the security forces has ever been prosecuted for causing a death in such circumstances.

The use of plastic bullets is contrary to the spirit and intention of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, to which the United Kingdom government subscribes. The Basic Principles enjoin police forces to “apply non-violent means before resorting to the use of force and firearms” (Article 4) and to develop non-lethal incapacitating weapons “with a view to increasingly restraining the application of means capable of causing death or injury” (Article 2). The Basic Principles do not allow any exceptions, even in situations of “internal political instability or any other public emergency” (Article 8). If a police officer fires a plastic bullet on an unarmed person without justification and causes that person’s death, the officer may be committing an extra-judicial execution, in breach of the Principles on the Effective Prevention and Investigation of Extra-judicial Arbitrary or Summary Executions, to which the government also subscribes.

### **DOMESTIC AND INTERNATIONAL CONCERN ABOUT PLASTIC BULLETS**

The Belfast-based human rights group, the Committee on the Administration of Justice (CAJ), has campaigned for many years for a ban on the use of plastic bullets<sup>93</sup>, as has the United Campaign Against Plastic Bullets.

In May 1982 the European Parliament voted to ban the use of plastic bullets throughout the European Community.

In 1995 the United Nations Committee Against Torture mentioned plastic bullets as being a matter of concern<sup>94</sup>.

In 1995 the Honorable John Shattuck, US Assistant Secretary of State for Democracy, Human Rights and Labor, also expressed concern about plastic bullets in an address to a conference organised by human rights groups, calling for “the elimination of such deadly security measures as the use of plastic bullets for civilian crowd control”<sup>95</sup>. In January 1996 the International Body charged with considering the decommissioning of weapons in Northern Ireland, chaired by former Senator George Mitchell, called in the context building confidence in the peace process for “ a review of the situation with respect to... the use of plastic bullets”<sup>96</sup>.

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legislation may have been enacted, means that public bodies must have regard to Convention rights even where an event occurred prior to the Human Rights Act's coming into force)

<sup>93</sup> *Plastic Bullets and the Law*, Committee on the Administration of Justice, Belfast, 1990

<sup>94</sup> Conclusions and recommendations of the United Nations Committee Against Torture, 1995.

<sup>95</sup> *Human Rights; The Agenda for Change*, Committee on the Administration of Justice, Belfast, December 1995

<sup>96</sup> *Report of the International Body*, 22 January 1996, para. 55

In 1996, CAJ organised systematic independent observation across Northern Ireland of the way that the RUC policed the summer marching season, and were able to publish an authoritative report<sup>97</sup> which highlighted a number of serious concerns about the RUC's actions, including their excessive use of plastic bullets. One of these concerns pointed to the discriminatory firing rates for plastic bullets. They pointed out that only 662 bullets were fired during the period 7<sup>th</sup> to 11<sup>th</sup> July 1996, the period of predominantly unionist protests, whereas 5,430 were fired between 11<sup>th</sup> and 14<sup>th</sup> July, the period of predominantly nationalist protests. Thus more than eight times as many plastic bullets were used against nationalists as were used against unionists.

Following the publication of CAJ's report, the government asked Her Majesty's Inspector of Constabulary (HMIC), the body that inspects police services in the United Kingdom, to make a particularly close study of the way in which the RUC deployed plastic bullets. HMIC's report<sup>98</sup> expressed concern about the training, command structure, and reporting system for plastic bullets in Northern Ireland, and highlighted the weaker guidelines for their deployment that pertained in Northern Ireland (please see below).

In 1998, the United Nations' Committee against Torture again found "the continued use of plastic bullet rounds as a means of riot control" to be a matter for concern, and recommended their abolition<sup>99</sup>. In 2004, the CAT found as a positive aspect, "...the confirmation that no baton rounds have been fired by either the police nor the army in Northern Ireland since September 2002"<sup>100</sup>. No doubt when they next review the United Kingdom's compliance with the International Convention against Torture they will be concerned to learn that plastic bullets have again been used.

In 2002, the United Nations' Committee on the Rights of the Child said;  
"The Committee is concerned at the continued use of plastic baton rounds as a means of riot control in Northern Ireland as it causes injuries to children and may jeopardize their lives."  
It too urged the abolition of plastic bullets.<sup>101</sup>

## CONCLUSION

In our opinion, once plastic bullets are available to a police force, their use becomes inevitable, and once they are used, experience shows that abuse also becomes inevitable. Although physically different from live ammunition, both in form and effect, the firing of plastic bullets from a weapon has the same psychological effect on police officers as the use of an actual firearm.

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<sup>97</sup> *The Misrule of Law*

<sup>98</sup> *1996 Primary Inspection of the RUC by Her Majesty's Inspector of Constabulary*, HMSO, December 1996

<sup>99</sup> Conclusions and recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, A/54/44, 11 November 1998

<sup>100</sup> Conclusions and recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories, CAT/C/CR/33/3, 25 November 2004

<sup>101</sup> Concluding observations: United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, CRC/C/15/Add.188, 9 October 2002



They give the police officer concerned such a disproportionate advantage over an unarmed civilian, however riotous his or her behaviour, that the officer is very likely to resort to it as a means of self-protection that can be operated at a relatively safe distance from any opponent. This may also mean that police officers will fail to make full use of any opportunity that may exist or arise for defusing violent situations by less draconian means that might be attempted by unarmed officers. We recognise that, however well-trained police officers may be, and however tight the guidelines under which they operate, in the heat of the moment and especially when in fear for their own safety or that of their colleagues they are likely to over-react. Furthermore, the use of plastic bullets, especially if it appears to be indiscriminate, may provoke an already riotous crowd to become even more violent. A weapon that has caused so many fatal and serious injuries during the history of its deployment is, we argue, unsuitable for use in crowd control in any civilised democracy.

**SEPTEMBER 2005**