

CAJ's submission no. 263

**CAJ's Commentary on Chapters 8 & 9
Use of Force and Covert Policing of the
2008 Human Rights Annual Report –
including commentary on the Taylor
Reforms**

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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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14 August 2009

Dear Peter,

Re: Review of Chapters 8 & 9: Statistics on Use of Force, Covert Policing and the Taylor reforms on police discipline

Thank you for inviting the Committee on the Administration of Justice (CAJ) to comment on Chapters 8 & 9: Use of Force and Covert Policing of the 2008 Human Rights Annual Report as part of the Human Rights & Professional Standards Committee's Programme of Work. We are also pleased to comment on the Taylor review of police disciplinary arrangements.

The Committee on the Administration of Justice (CAJ) is a non-governmental human rights organisation. With respect to policing, CAJ works to ensure that policing structures, policies, practices, and conduct conform to best practice and internationally recognised human rights standards. CAJ is mindful that police reform takes a long time, involves transforming power relations in society, and requires changes in police culture, structures, doctrine, and practice. CAJ recognizes the positive changes that have occurred within the PSNI, most notably to policing structures, as well as the deficit of trust that still informs community-police relations.

Covert Policing and the Use of Force - Human Rights framework

Internationally and domestically covert policing and the use of force have been fertile areas for police misconduct and brutality in the last half of the twentieth century. Historically in Northern Ireland political stability was not based on consent but rather the appearance of 'normality' enforced by a security apparatus which relied heavily on a quasi-military role assumed by the RUC. In the twenty-first century police reform and the current era of rights-based policing lead to a focus on the theme of human rights compliance and the justified use of force.

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CAJ advocates basic human rights principles which contribute much to defining the boundaries of ‘acceptable’ force. Research in police science which dovetails with many ECHR principles has suggested some of the key dimensions of justification are (Kleinig, 1996):

- Proportionate: must be absolutely necessary in the situation, conduct and circumstances;
- Minimized: must be the least force necessary which means that officers must be trained in a range of options including conflict resolution techniques and highly-skilled in deployment;
- Practical: must be relevant to the legitimate aims the officer is seeking to accomplish.
- Intention: must be genuinely in the service of policing and not improper or self-serving, as in ‘for punishment’ or ‘contempt of officer’;
- Seemliness: must not be inhuman or degrading, which dovetails with the case law under Article 3 of ECHR;

Three other factors are also important to the justification for the use of force: the methods of force deployed; the competence of the officer; and, the strategic and legal/societal framework (Miller, Blackeler and Alexandra, 1997).

Police use of force places an enormous responsibility on members of the police force and represents a corresponding opportunity for abuse. By extension, the exercise of force needs to be justified by the ends it realises.

Analysis and measurement

Central to the policy of normalisation and bedding down of the new police service is the presentation of statistics to reflect police acceptability and legitimize the practices and policies of the PSNI. Relying on quantitative data and framing questions in specific ways do more to construct a legitimacy to police performance and hide deficiencies in confidence than to critically analyze existing practices, police beliefs and values, and community sentiment. This deficit was directly addressed in the Criminal Justice Inspectorate’s report on its inspection of policing with the community which noted that the NIPB’s approach to assessing police performance should be revised by “using a wider range of qualitative as well as quantitative indicators” (p. x).

Without comprehensive data – and this is particularly relevant with respect to covert policing - it is difficult to monitor police misconduct or incidents where officers may operate close to the limits of what is proportionate and justified. It is also difficult to improve police practices, and contribute toward police legitimacy and confidence in the police service. It is essential to have comprehensive data which excavates and examines police practices and values, and does not merely catalogue incidents, particularly in areas where police traditionally abuse their authority and misuse force the most – against vulnerable, powerless or minority communities. The dimensions of justification noted above suggest how ‘justifiable’ force might be operationalised and measured for research purposes.

Northern Ireland remains a deeply divided society and the Patten Report was unequivocal in its acceptance that this divided society has “its own particular history and culture” and that attitudes toward the police are conditioned by this fact (p. 3). However, very little of this history and the legacy of such attitudes are currently reflected or explored in statistical data on the police service. A decade later the nature and extent of the change in the ethos of the PSNI as well as police-community relations are far from normalized but little is known about the degree of change that has occurred and what constitutes best practice.

More generally, in the new era of policing, a predominant reliance on quantitative methods does not adequately measure the complexity of policing with the community (PwC) nor the subtle dynamics of police-community relations in diverse areas. For example, statistics in different communities may indicate similar levels of ‘acceptability’ of the PSNI but do not ascertain the true reasons for this. In a unionist area this may indicate real acceptance of the police service while in a nationalist/republican area it may merely indicate that officers are understood to liaise and ‘do policing’ with respected community leaders, often ex-prisoners. This would indicate two vastly different perceptions on what makes the police credible.

Such analysis is also relevant to police practices. For example, the PwC method incorporates a problem-solving model which requires considerable skill from the officer in assessing situations, communication, and ultimately, if absolutely necessary, in deploying force minimally. In this complex context it seems probable that the use of force may be ‘appropriate’ but not ‘highly skilled’. Research which explores this aspect could contribute toward better training.

In summary, a move away from a managerialist approach to analysis to a more professional, standards-based and qualitative methodology seems very

overdue. I have further argued the incorporation of qualitative data is particularly significant in the context of human rights and policing with the community. Such data would allow more substantial engagement with social attitudes and relations and an understanding rooted in the experiential. Such an approach is well suited to research concerned with the complexity of everyday contexts and compliments the focal point of such a study, the practices and processes that compose everyday life for police officers and members of diverse communities.

The Taylor Reforms

In general CAJ would have a concern with any reforms or policies which are implanted into Northern Ireland from other contexts. Such initiatives make the mistake of regarding police-community relations or more pointedly, the relationship between nationalists and the police, as a mirror-image of that which exists in other contexts between the police and minority communities. Implicitly this perspective rejects the divided-society model of Northern Ireland and the proposal that the core division lies along cultural/national identities. This division overrides other sociological categories such as race, class and age and is significantly different from ethnic divisions as experienced in England or Wales.

With respect to internal disciplinary procedures, at the moment the PSNI is in a period of transition, but with a culture and composition that is still dominated by one tradition. Subsequently, it is likely that some behaviour that may require disciplinary action would involve religious and political harassment particularly in light of the emphasis on Catholic recruitment. Therefore, internal disciplinary procedures should be tailored to the specific Northern Ireland context, and critically examined to ensure they are fit for purpose and sensitive to the political and cultural realities here.

Yours sincerely,

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