

**Presentation to
Commonwealth Human Rights Initiative,
Maggie Beirne, Director
Committee on the Administration of Justice (CAJ)
24 March 2007**

Problems with policing in Northern Ireland

- Lethal force
- Interrogation methods
- Unrepresentative
- Emergency laws and discriminatory treatment
- Lack of due process (Diplock, burden of proof)\
- Highly militarized
- Unaccountable

CAJ role in change process

- Political context
- Previous history of work
- Human Rights on Duty report
- Patten input and monitoring
- Legislative monitoring
- Criminal Justice and Devolution report

Solutions – Patten and Guyana experience

- Accountability
- Police powers
- Training
- Recruitment and retention
- Human rights standards
- Community policing

Accountability and civic oversight

- Policing Board/District Policing Partnerships
- Police Ombudsman for complaints (individual and systemic)
- Relevant to elsewhere? So independent? Police powers?
- Omagh and McCord cases as exemplars.

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Thanks to the Commonwealth Human Rights Initiative for inviting me to this important seminar to explore how, and if, some of the experiences of policing reform in Northern Ireland might have some relevance to the debates underway in South Asia. Whilst having had the great pleasure to visit several countries in the region in the past, I would never presume to speak about your situation here, and can only hope that by focusing my remarks on the work of my organization – the Committee on the Administration of Justice (CAJ) – in the policing change process in Northern Ireland, you may hear of some experiences that bear some resemblance to the problems you are dealing with.

Let me then first begin with an exploration of the kinds of problems that were faced in turning around policing in Northern Ireland. Whilst it may not be the case with this eminent audience and in this part of the world, we often find that people often do not understand the extent and enormity of the conflict in Northern Ireland. Over thirty years of intense political conflict, over 3600 people died. Given our very small population (1.5m), this loss can be equated in per capita terms with the loss of life in the USA of some five Twin Towers for every year of the 30 years of the conflict. Out of these 3,600 people, the vast majority was killed by paramilitaries, but more than 10% were killed directly by government agencies (police or army) and an unknown number were killed as a result of official collusion with one or other of the various paramilitary groups.

The UK government was taken to the European Commission and the European Court on Human Rights and found to have been engaged in torture (by the former) or cruel, inhuman and degrading treatment (by the latter), in its early efforts at internment. Indeed, the very five techniques that are now allegedly being experimented with in Abu Ghraib and in Guantanamo were outlawed in the early 70s after the terrible experiences of Northern Ireland. Coercive interrogation techniques were found not only to be morally reprehensible but often ineffective in that they rarely secured the information sought but frequently polarized and alienated the very communities that could be most helpful in providing useful information about security threats.

The police in Northern Ireland was seriously un-representative. Like most police forces, it was largely male, and had few of the smaller minority communities amongst its number, but of particular importance was its failure to attract many officers from amongst the Catholic nationalist community. The population is roughly 60/40, or 55/45, with Protestant unionists in the majority; the police force, the Royal Ulster Constabulary, was however 93% from the majority community. The reality and the perception was of one community ‘policing’ the other.

Throughout its existence, the police in Northern Ireland had to operate within the framework of emergency and counter-terrorism powers. Like the experience elsewhere, extensive powers encourages abuses, and Northern Ireland was no exception. CAJ argued that emergency powers leading to human rights abuses and discriminatory treatment merely served to feed and fuel the conflict and not temper or end it.

Nor, of course, were the problems solely those of the police. Once suspects were arrested they faced Diplock (non-jury) courts, and suffered from a lesser burden of proof as to their guilt. The police itself was highly militarized in structure, discipline, and in all its external symbols (heavily fortified vehicles, police stations, patrols accompanied by the army etc). There was a strong sense that the police (and the wider criminal justice system) was insufficiently accountable. The courts did not listen sympathetically to charges laid against the police or army, and the institutions set up to specifically hold the police to account were considered very weak and complacent. The Police Authority for example had no trade union and no nationalist political representation since it was thought to serve little genuine oversight authority of the Chief Constable.

Suffice it to say, on the basis of the above, that policing was very much part of the problem that the peace process, once set in train, needed to engage with. Whereas previous efforts to reform or improve policing had largely failed because of the lack of progress in the bigger political domain, the beginnings of a peace process provided a window of opportunity for radical change. Moreover, without such change, it is likely that the peace process itself might have stumbled. Policing and political change in Northern Ireland have long been intertwined debates.

CAJ role in change process

I was asked by the CHRI to talk in some detail about CAJ's role in the process of policing change, since many of you now are in the process of transition and it might be interesting to hear how the mechanics of change operated. Well, firstly, as indicated, the process of policing change is difficult, in the Northern Ireland context, to separate entirely from its political context.

With the first announcement of ceasefires in 1994, an immediate flowering of debate at the local level about future policing started to occur. People began to envisage how policing might look in a 'normal' democratic, non-violent, society, and looked around for international good practice to draw upon. The CAJ is an independent non-governmental human rights group working on policing and traditional civil liberties issues since its foundation in 1981. We had issued several reports on specific aspects of policing – complaints, lay visitors, police accountability etc. However, the new environment encouraged us to commission a major study of policing in a much more holistic and comprehensive way. How do other countries ensure representative policing? How do they train the police in human rights norms? How does one make the police truly accountable in democratic and legal terms? What structures work best? CAJ sought funding, staffing and set about preparing a detailed tome on these various issues. Unfortunately, in the meantime, the first ceasefires, and the political opening they had

created, had collapsed, and our efforts seemed fruitless. Still we persisted and produced a report at the end of 1997 (Human Rights on Duty – incorporating research from South Africa, central America, Canada, the Netherlands, Australia and elsewhere, all of which gave useful good and bad experiences of policing change).

In retrospect, the timing could not have been better. Only four months later, the Good Friday/Belfast Agreement was to be signed. We had a few months to influence the political negotiations and ensure that all the international learning could be put to good effect. The terms of reference of what was eventually to become the Patten Commission (an independent international commission into policing chaired by Chris Patten) were incorporated into the final peace deal.

The terms of reference were very important – they gave a detailed and visionary brief for the Patten Commission to follow. They also constituted a commitment by governments and most political parties to engage with the findings of the independent commission. Whilst it would have been impossible for our politicians to agree on the specifics of such a contentious issue such as policing in the negotiations themselves, they were at least able to agree on a vision for good policing, and agree that a body of independent experts could usefully spell out this vision in more detail.

From CAJ's perspective, we had sought (with some success) to work with all parties to ensure that human rights and equality was at the heart of much of the political agreement, and we were therefore well placed to provide input into Patten's work (directly in our own name, and by influencing the content of other submissions). We monitored the many public meetings, and written submissions, and sought to influence the tenor of the debate by injecting practical and constructive proposals about ways forward. Our intent throughout was to put the political opening to best use to improve policing, but at the same time to try and 'depoliticise' the debate by focusing on specific policing problems and constructive and realistic solutions. So, whereas we could not comment in any detail on what name the new police should be given, or what flag should fly over police stations, we could insist on the importance of the police being representative and able to work with all the community. International human rights standards did not give specific answers to all questions, but they often provided the framework within which the debate should take place.

In due course, CAJ had to play a more active role in ensuring that the Patten recommendations were turned into legislation. The Commission finished its work and had to hand over the follow up to the UK government, and the latter whilst claiming to welcome the report, showed strong resistance to many of its more fundamental recommendations. CAJ made legislative proposals, critiqued government arguments, and sought actively in its work with the legislators of all parties to keep the change process on track. We are now monitoring the operation of the various Patten institutions and have produced three commentaries to date on the work of the new bodies.

That work is carrying on even nowadays as the political focus has changed to devolving the criminal justice and policing functions from a Direct Rule (British) minister to a local

administration. CAJ has undertaken similar good practice research on criminal justice and policing practice in several parts of the world, and we are currently using this to assess the devolution models that are being discussed between local political parties and governments.

Solutions – Patten and Guyana experience

CAJ's Human Rights on Duty, confirmed by the Patten Commission experience, and its excellent report – A New Beginning – and my own work several years later in a very different context, in Guyana in South America, highlight that there are many things in common regarding policing around the world. Obviously, policing reflects and has to respond to very different historical, political, social and economic realities, but it is difficult to imagine any debate on policing change does not have to engage with concerns of: accountability; police powers; training; recruitment and retention; the role of human rights standards and community policing.

Each of these topics could (and do) take extensive study. CAJ certainly addressed them all in some detail in our own work, and Patten similarly found that any comprehensive review of policing required looking at each of these important topics. Northern Ireland, as elsewhere, had been the subject of one-off reviews, and internal assessments, but any major initiative to overhaul the police needs to look at all of the inter-related themes.

To give one example, many people think of training, and particularly human rights training, as being a relatively 'simple' issue. But how do you avoid human rights training being a simple "add on" – a series of dry legal lectures into the international principles which have no relevance for day-to-day policing. Surely it is better to examine how, when teaching police officers to use their weapons accurately, they simultaneously learn what human rights principles govern their use of those weapons. How do you avoid training being something that happens in the police college and which experienced colleagues easily dismiss as irrelevant when on the streets? How do you ensure that human rights and equality training in fact impacts on the institutional culture of policing and that the "canteen culture" is positively influenced by the nature of the training provided to new and longer serving officers?

While much of Patten remains to be done (not least much of the work around community policing), CAJ believes that this kind of blueprint is extremely positive – creating the holistic approach that is needed if change is to have any effect at all. We were critical when it was first issued – thinking that there were some important omissions – but nevertheless it provides a valuable template against which everyone in Northern Ireland can monitor change. One of its very useful recommendations was the creation of a monitoring body to oversee the change process. CAJ has also criticized the operationalisation of this recommendation, but the fact that reports are issued every few months up-dating the general public on change, or the lack of such, is we believe a very useful incentive for the change process and one that other jurisdictions may find useful too.

Accountability and civic oversight

I was primarily to talk about the models that we have introduced in Northern Ireland regarding accountability, and would address those interested in the detail of the legislation and the reform process to the following materials:

Patten report – to be found on www.belfast.org.uk, or www.nio.gov.uk

Policing Board – website: www.nipolicingboard.org.uk

Police Ombudsman – www.policeombudsman.org

Oversight Commissioner (temporary body shortly to come to an end) – www.oversightcommissioner.org

Of particular interest is the creation of the position of the Police Ombudsman for Northern Ireland. We had had earlier police complaints bodies along the lines that some of you have already alluded to in the seminar. We had in the early 1970s a Police Complaints Body, but that was found insufficiently independent, so we created in the 80s an Independent Police Complaints Commission that provides an independent element of oversight of the police response to complaints. However, by the mid 90s, dissatisfaction with the police, and the perceived inadequacy of the police complaints system, led to a decision to have an entirely independent complaints system.

The model is probably unique in the world, and it is not self-evident that it would be appropriate everywhere. It was a crucial move in NI if we were to start to build up police credibility and legitimacy. Since 2000, all complaints about the police from the general public are forwarded directly to the Police Ombudsman. The complaint can be minor or major (minor discourtesy to questions of serious crime), and if they are made to the local police station must be directed onto the Ombudsman. The Ombudsman has her own staff which have the powers of police constables and carries out a police-type investigation (though entirely separate from the police). As distinct from the examples I heard from other countries today, our Ombudsman function replaces the work undertaken elsewhere by the police, but is then forwarded onto the courts to deal with in the ordinary way. It seems elsewhere that judges (serving or retired) are used to adjudicate complaints, but they rely on the investigation of any complaint being carried out by the police under their authority?

Suffice it to say that public opinion polls highlight a very high level of knowledge of, and confidence in, the function of the Ombudsman. The fact that her Office has a statutory duty to secure confidence from both the public and the police ensures that she seeks to explain that her work is geared at ensuring good policing, and is not (and should not be seen as) antithetical to the work of good police officers on the ground.

It is certainly interesting comparing the reception of an early report from the Ombudsman into a tragedy in Omagh, where her findings were loudly and vociferously challenged by the police, and where she was left isolated by the government, and a very recent and almost equally controversial report into police collusion (into the murder of Raymond

McCord Jnr). Interestingly, several years on, the public and political response has been very different – no-one much has seriously challenged her findings and her report has been accepted by both the relevant minister and the Chief Constable. There are probably several reasons for this, but it is difficult to imagine that she could have issued the second (and many other interim) reports to such widescale acceptance, if she had not been stiff in her resolve in those first few months of her tenure.

To conclude, I think many of the problems and concerns that we have all addressed, albeit in different ways, is the issue of institutional resistance. CAJ often experienced, and still continues to experience, institutional resistance. Maybe it would be useful for the participants of this seminar to talk about who might resist the change process, and why, and how that can be addressed and not allowed to subvert the move forward.

Thank you.