

CONSULTATION RESPONSE:

Lammy Review of BAME representation in the criminal justice system

June 2016

To: BAME_Review@justice.gsi.gov.uk

1. BAME representation in the criminal justice system

- 1.1 The Lammy Review has been tasked with exploring the over-representation of black, Asian and minority ethnic (BAME) people in the criminal justice system. The Review has formally defined the focus of inquiry as ‘the Crown Prosecution Service onwards’¹.
- 1.2 To understand and address the over-representation of BAME people in the criminal justice system, the Centre for Crime and Justice Studies believes it is crucial to consider how BAME people are disproportionately come to the attention of the police and courts.
- 1.3 Policing is an important factor in the disproportionate representation of BAME people in the criminal justice system (CJS). The focus of police activities, specifically the geographic location and whom they target act as key entry point for BAME people into the CJS.
- 1.4 A narrow focus on the CPS stage onwards will therefore ignore important questions about why so many BAME people are being drawn into the system in the first place.
- 1.5 Our research and policy analysis over a number of years indicates that to understand the root causes of disproportionality in the criminal justice system, the Lammy Review needs to go ‘upstream’.

2. Going ‘upstream’: the ethnic penalty

- 2.1 There is nothing *sui generis* about the ethnic disproportionality found in the criminal justice system. It is part of a broader pattern experienced by many BAME people in many areas of early life into adulthood.

¹ As defined on the Lammy Review Consultation webpage: <https://consult.justice.gov.uk/digital-communications/lammy-review-of-bame-representation-in-cjs>

- 2.2 The prison population largely consists of people from low income backgrounds. Many are dispossessed. For example, a third of the prison population were homeless, half of this group sleeping rough before entering prison. On initial inspection it might be concluded the disproportionate presence of BAME people in criminal justice is simply an artefact of the poverty experienced by large sections of many BAME communities. However, an examination of other data suggests there are a wider range of factors at play beyond low income.
- 2.3 The Centre for Crime and Justice Studies first explored the 'ethnic penalty' in 2008² and again more recently in 2015³ with a specific focus on BAME young men. From a review of a wide range of data covering the social and economic experiences of different ethnic groups we drew the conclusion that young black men were far more harmed by British society than harmful to it or the communities that they lived in. Disproportionate imprisonment itself constituted one part of the broad spectrum of harms experienced.
- 2.4 The concept of the 'ethnic penalty' has been used by researchers as a way of understanding poorer outcomes for some BAME groups in terms of employment and income. At the Centre we extended the use of the term to mean a penalty in any aspect of life that exist even if a person from an ethnic minority has the same socio-economic background as a white person.
- 2.5 It is evident that, in terms of schooling, access to and type of university, employment opportunities, rates of pay, and access to housing, poverty and inequality explain part, but by no means all, of the unequal outcomes. Matt Ford, a member of staff at the Centre for Crime and Justice Studies, updated much of the data we first collated in 2008 supporting the notion that a key factor may be an 'ethnic penalty' experienced by young black men across a wide range of social institutions and social processes.⁴
- 2.6 Ford argues: *'It is clear from the evidence...that many black people face penalties in many areas of their lives. These penalties also seem to be cumulative, and they intersect with other factors to produce significant inequalities between ethnic*

² Roberts, R., and McMahon, W., (2008) *Ethnicity, harm and crime. A discussion paper*, Centre for Crime and Justice Studies, <https://www.crimeandjustice.org.uk/publications/ethnicity-harm-and-crime-discussion-paper>

³ Ford, M. (2015) 'Quantifying the ethnic penalty' *Criminal Justice Matters, Vol 101*, <https://www.crimeandjustice.org.uk/publications/cjm/article/quantifying-ethnic-penalty-0>

⁴ Ford, M. (2015) 'Quantifying the ethnic penalty' *Criminal Justice Matters, Vol 101*, <https://www.crimeandjustice.org.uk/publications/cjm/article/quantifying-ethnic-penalty-0>

groups. The sheer breadth of areas that the ethnic penalty appears to occur in...suggests a person's ethnic background still has a considerable influence on the way people are able to live their lives.'

2.7 In other work, published by the Centre for Crime and Justice Studies, we have highlighted how experiences of punishment and exclusion are common experiences for BAME people. For example;

2.7.1 Antony Gunter's ethnographic research, describing the use of discipline and punishment in the classroom and on the streets.⁵

2.7.2 J M Moore's exploration of the historical use of punishment and imprisonment against BAME people in colonial history.⁶

2.7.3 Patrick Williams' research⁷ for Manchester City Council exploring the 'criminogenic needs' of young people. This quantitative study demonstrated that police in Manchester were disproportionately, and wrongly, identifying young BAME people as being gang members.

2.8 As the Centre for Crime and Justice Studies' member of staff, Rebecca Roberts has argued: *'Importantly, this isn't about just being poor. Or only having fewer educational qualifications. Or being unemployed. These problems are connected and cumulative. They are experienced in higher rates amongst black and minority ethnic people and are caused, aggravated and compounded by racism and discrimination'*⁸

2.9 The data tells us that 'penalties' exist for BAME people, and increasingly so for young Muslim men, in terms of disproportionate punishment. Discrimination can affect outcomes in employment, wages and school exclusions. The 'ethnic penalty' is a combination of explicit and implicit prejudice, discrimination and racism. It is cumulative.

⁵ Gunter, A. (2015) ' "Keeping it real": the experiences of black youth beyond criminal (in)justice statistics' *Criminal Justice Matters*, Vol 101 <https://www.crimeandjustice.org.uk/publications/cjm/article/%E2%80%99keeping-it-real%E2%80%99-experiences-black-youth-beyond-criminal-injustice>

⁶ Moore, J.M. (2015) 'The 'New Punitiveness' in the context of British imperial history', *Criminal Justice Matters*, Vol 101 <https://www.crimeandjustice.org.uk/publications/cjm/article/'new-punitiveness-context-british-imperial-history>

⁷ Williams, P. (2014) 'The police, gangs and racism' <https://www.crimeandjustice.org.uk/resources/police-gangs-and-racism>

⁸ Roberts, R. (2016) 'Racism and criminal justice', *Criminal Justice Matters*, Vol 101 <https://www.crimeandjustice.org.uk/publications/cjm/article/racism-and-criminal-justice>

3. Joint enterprise, gangs and racism

- 3.1 Research published by the Centre for Crime and Justice Studies, *Dangerous Associations: Joint Enterprise, gangs and racism*⁹, demonstrates the use of ethnic stereotyping as an evidential tactic by the Crown in joint enterprise prosecutions.
- 3.2 The research draws on a survey of nearly 250 serving prisoners convicted under joint enterprise provisions. It tracks the complex process of criminalisation through which BAME people are unfairly identified by the police as members of dangerous gangs.
- 3.3 More than three-quarters of BAME prisoners surveyed reported that the prosecution claimed they were members of a 'gang', compared to only 39 per cent of white prisoners. This apparent 'gang' affiliation' is used to secure convictions, under joint enterprise provisions, for offences they have not committed.
- 3.4 The report also discusses police gang databases in Manchester, London and Nottingham, which claim to record gang association. These lists include people who 'have no proven convictions and... those who have been assessed by criminal justice professionals as posing minimal risk'. They are also dominated by BAME people, as a result of racial stereotyping.
- 3.5 On further investigation it appears that multi-agency teams led by police, but including agencies such as social services and Troubled Families units and others, contribute information that enables the compilation of a 'gang matrix'. It is this attribution that plays a key role in creating the disproportion that appears within the criminal justice system.
- 3.6 One example of such 'up stream' information management was uncovered by a Freedom of Information request, undertaken as part of the research, revealing that Job Centres in London have almost 4,000 people flagged as 'gang members' on their databases.
- 3.7 The report concludes that, for all its injustices, the process of joint enterprise prosecution is not intended to be discriminatory. But in practice, young BAME people are disproportionately at the receiving end of a series of criminal justice practices, starting with police gang databases and concluding with disproportionate joint enterprise convictions.

⁹ Williams, P. and Clarke, R., (2016) *Dangerous associations: Joint enterprise, gangs and racism*, Centre for Crime and Justice Studies. <https://www.crimeandjustice.org.uk/publications/dangerous-associations-joint-enterprise-gangs-and-racism>

3.8 In this context it is important to understand the processes at play that result in BAME people disproportionately coming to the attention of the criminal justice system.

4. Conclusion

4.1 While criminal justice processes have a certain amount of organisational and cultural autonomy, they do not sit in a bubble separate from society. They are grounded in it, and reflect social, political and economic relationships that shape society as a whole.

4.2 It is only by an examination across the whole of the social experience of BAME lives that it will be possible to understand the place and role of the specific set of administrative procedures that make up the criminal justice process.

4.3 The bias witnessed in criminal justice is connected to endemic racism and discrimination. It is important to explore the factors that lead to the over-policing and punishment of black and ethnic minority people that acts as the gateway to disproportionate punishment.

4.4 Following the welcome Supreme Court verdict (*R v Jogee*) on joint enterprise, the fact remains that there are still a disproportionate number of BAME people in prison as a result of a joint enterprise conviction. This requires urgent attention.

About the Centre for Crime and Justice Studies

At the Centre for Crime and Justice Studies is a research and education charity. We advance public understanding of crime, criminal justice and social harm. We are independent and non-partisan, though motivated by our values. We stand with those most vulnerable to social harm.

We believe that the United Kingdom's over reliance on policing, prosecution and punishment is socially harmful, economically wasteful, and prevents us from tackling the complex problems our society faces in a sustainable, socially just manner.

Contact: Richard Garside, Director, Centre for Crime and Justice Studies

richard.garside@crimeandjustice.org.uk

www.crimeandjustice.org.uk