

**Review of Racial Bias and BAME representation in the Criminal Justice System**

An independent review of the treatment of, and outcomes for Black, Asian and Minority Ethnic Individuals within the criminal justice system in England and Wales

7 September 2017

Cc: Rt Hon David Lidington MP,  
Lord Chancellor and Secretary of State for Justice

Dear Prime Minister,

Please find attached the final report from my review of the treatment and outcomes of BAME individuals in the criminal justice system (CJS). When I was asked to carry out this review I saw an opportunity to build consensus beyond party politics. I am grateful for the support the government has provided throughout.

By now the over-representation of BAME individuals in the criminal justice system is well established. Together, BAME communities make up 14% of the population of England and Wales, but 25% of adult prisoners and 41% of under 18s in custody. If people from BAME backgrounds were in prison in proportion to the wider population, we would have over 9,000 fewer prisoners - the equivalent of 12 prisons. The economic cost of BAME over-representation throughout the CJS is estimated to be at least £309 million a year.

My biggest concern is with the youth justice system. It is seen by many as the success story of the CJS, but the untold story is what is happening with BAME young people. Overall, youth offending has fallen significantly over the last decade, but BAME young people now make up a larger share of those offending for the first time, those reoffending after a conviction and those serving a custodial sentence. We cannot allow these young people to become the next cohort of adult offenders filling the nation's prisons.

In November last year I set out my emerging findings from the review. As I wrote then, I do not believe that all the causes of BAME overrepresentation lie in the CJS, or that all the answers do either. Prisons may be walled off from society, but they are products of it. Problems like poverty, family breakdown and educational failure start long before a young man or woman ever enters a plea decision, goes before a magistrate or serves a prison sentence. These are also problems faced by White working-class communities.

Nevertheless, the justice system has far-reaching powers and responsibilities, affecting the lives of millions of people each year. The evidence suggests that it works more equitably in some areas than others. For example, the verdicts delivered by juries – which deal with the most serious cases in the CJS – do not appear to be influenced, on average, either by the ethnicity of jurors or defendants. While no institution is perfect, the Crown Prosecution Service delivers broadly proportionate charging decisions.

However, there are also worrying disparities. Arrest rates are generally higher across all BAME groups than the White group. BAME defendants plead not guilty at higher rates than White defendants. There is evidence suggesting BAME offenders are more likely to receive prison sentences for some offences. BAME prisoners are less likely to be identified with problems like mental health concerns, or learning difficulties. BAME prisoners report lower/ less access to prison jobs or offending behaviour programmes, and reoffending rates are highest for both Black adults and Black under 18s.

It is clear to me that BAME individuals still face bias in parts of the justice system. Not all of this is overt discrimination and some of it may not even be intended. But rather than attempt to decode

the intentions behind countless decisions across many different institutions, my report focuses on the *treatment* and *outcomes* of BAME individuals. Actions matter most – and the prescriptions for fair treatment are remarkably similar, whatever the diagnosis of the problem.

The lesson from the best parts of the CJS is that scrutiny improves decision-making. It helps prevent problems by encouraging people to reflect carefully on their decisions – and it allows for bad decisions to be corrected if there is a problem. Jurors must justify their opinions to one another. The CPS invites outside scrutiny and undertakes its own random reviews of case files. The link between scrutiny and equitable decision-making is the first key theme running throughout my report.

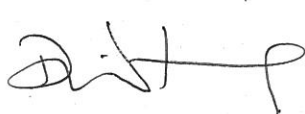
Trust is the second theme. The CJS has a trust deficit with BAME communities and it is causing problems. It lies behind the differences in plea decisions – many BAME defendants do not trust the advice provided by their own solicitors, let alone the warnings of police officers to admit guilt. What begins as a ‘no comment’ interview can quickly become a Crown Court trial – involving trauma for victims, cost to the taxpayer and longer sentences for defendants who are found guilty. In prison, many BAME men and women believe they are actively discriminated against. This contributes to an atmosphere of ‘us’ and ‘them’ and an urge to rebel rather than reform.

Responsibility is the third and final theme running throughout the report. In particular, this concerns the role of the adults in the lives of children caught up in the justice system. The youth justice system should be much more rooted in local communities and parents can play a stronger role, as many want to, with the right challenge and support. This matters most in communities where BAME children are being drawn into street crime, sometimes under duress, by powerful adults. More can be done to focus attention and enforcement much further up criminal hierarchies.

The UK is not alone in asking itself how to reduce the overrepresentation of minorities in its justice system. Over the course of the review I visited six countries and 12 cities around the world. In each I saw governments and civil society organisations grappling with how best to reduce racial disparities. This report draws together the key lessons that can be applied to our own context, alongside the leading practice identified in England and Wales.

My report makes 35 recommendations in total. These include a drive to increase transparency across the CJS, with more data published on everything from sentencing outcomes to the treatment and outcomes for BAME prisoners. I recommend targets to diversify the workforce of CJS institutions, so that the prison service, the judiciary and the magistracy are representative of the wider population by 2025. I propose reforms to the youth justice system, so that it becomes more accessible to, and embedded in, local communities. And I identify ways to avoid criminal records serving as a ‘second sentence’ for offenders, including a deferred prosecution scheme for first time offenders and a new infrastructure for sealing records where ex-offenders can demonstrate that they have changed.

Many of these recommendations address problems shared by BAME adults and children, men and women. The proposals – and the analysis behind them – offer the beginnings of a consensus that I hope will not be squandered. I have seen for myself the difference that focused and committed leadership can make in the best parts of our CJS. That leadership is needed now in parliament, across Whitehall and throughout the CJS itself. I am determined that the treatment of, and outcomes for, BAME individuals remains a priority in the years ahead – I am sure that you share that commitment.

Yours sincerely  


The Rt Hon David Lammy MP