Race Equality in the Criminal Justice System

Developing a network for BAME civil society organisations working in the Criminal Justice System

Paper prepared for the BTEG consultation events 2011

Neena Samota
Forward

This briefing has been produced to accompany a series of consultation events BTEG held over October and November 2011 to both launch and inform the development of its network for BAME organisations and specialist projects working with BAME communities in the CJS. The paper succinctly highlights the major issues facing BAME communities and CJS institutions with regards to disproportionately poorer outcomes for certain BAME communities in relation to key CJS outcome indicators from police relations, to sentencing through to the prison population.

This disproportionality has been a consistent feature of the CJS and has been the focus of numerous official reports, public enquiries and investigations. What is clear is that race equality remains a critical issue that the CJS will be judged upon. The current government has set a pivotal aim in reducing reoffending in its programme of reforms. However not having a clear focus on achieving race equality outcomes as part of its strategy will in our opinion reduce the likelihood of positive outcomes.

The sheer level of the numbers involved, make the case for a greater focus on achieving race equality in our opinion essential. At BTEG we believe civil society organisations from within BAME communities, with the involvement of former offenders can play a substantial role in reversing these figures. This is an opportunity to show the Big Society in action making a difference for marginalised communities on the social issues that impact across society.

BTEG would like to thank Clinks for supporting the production of this briefing paper and Neena Samota for putting together a concise paper that pulls together a clear picture in plain objective language from the official figures. We are looking forward to building this network and working with partners to draw greater attention to the race equality challenge across the CJS and the contribution that community led organisations can make in meeting this challenge.

Jeremy Crook OBE
Director
Introduction

This paper seeks to identify the major challenges affecting the black, Asian and minority ethnic (BAME) communities and third-sector organisations supporting offenders. The paper asserts that the persistence of racial disproportionality in the criminal justice system necessitates targeted action, on a multi-agency basis, that addresses 'entry' and 'exit' issues faced by individual offenders from different ethnic groups. Any attempt to address and re-balance disproportionality must start with those BAME organisations that contribute to reducing re-offending and help offenders resettle in their communities. However, BAME organisations not only have limited capacity and resources but also lack a voice to influence strategic decision-making. The aim of this paper is to generate discussion, with BAME organisations, about redressing some of the intractable problems surrounding race in the operation of the criminal justice system.

Context

The Coalition government's project of building a "Big Society" is underpinned by familiar themes of redistribution of power from a central state to local communities and individuals, provision of transparent information to make informed decisions and greater accountability. These themes are familiar in the sense that the drive to achieve race equality in the UK rests on the very same demands of redistribution of power, transparency and accountability. The White Paper Open Public Services outlines a blueprint for modernising public services based on these themes.¹ The five principles for modernisation include:

- increase choice
- diversity of providers
- accountability to users
- decentralise services
- ensure fair access

A striking aspect of the "Big Society" agenda as articulated in the public service reform documents is that it makes no reference to race equality. This seems an aberration given that significant gaps in equality persist in

employment, education, housing, criminal justice and health care statistics.² Black, Asian and minority ethnic (BAME) communities have an important stake in developing and contributing to a fair and equal "Big Society". However, there are several barriers that impede their contribution including budget cuts and the lack of representation in local decision-making structures. In drawing attention to race disproportionality in the criminal justice process, this paper questions the space available for BAME groups to shape the "Big Society" agenda.

The challenge of proportion

Disproportionality, or disproportionate representation based on ethnicity, has been and remains a core challenge for the criminal justice system (CJS) in England and Wales. The first official statistics relating to the proportions of ethnic minorities dealt with by the CJS were published in 1986 by the Prison Service. These statistics showed that black people, both men and women, were significantly over-represented among those serving custodial sentences compared to their presence in the general population. The chart below would suggest that the situation has not changed significantly since then.

Percentage at different stages of the Criminal Justice System compared with ethnic breakdown of general population, England and Wales 2008/09

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Mixed</th>
<th>Chinese/Other</th>
<th>Not stated/Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population aged 10 + 2007 PEEGs*</td>
<td>89.4%</td>
<td>2.6%</td>
<td>5.2%</td>
<td>1.3%</td>
<td>1.5%</td>
<td>0.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Stops and Searches</td>
<td>67.0%</td>
<td>14.8%</td>
<td>8.8%</td>
<td>2.8%</td>
<td>1.3%</td>
<td>5.4%</td>
<td>100%</td>
</tr>
<tr>
<td>Arrests</td>
<td>80.6%</td>
<td>7.6%</td>
<td>5.4%</td>
<td>2.8%</td>
<td>1.4%</td>
<td>2.2%</td>
<td>100%</td>
</tr>
</tbody>
</table>

### Cautions

<table>
<thead>
<tr>
<th></th>
<th>82.6%</th>
<th>6.7%</th>
<th>4.9%</th>
<th>-</th>
<th>1.5%</th>
<th>4.3%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court ordered supervision - Probation</td>
<td>82.0%</td>
<td>6.0%</td>
<td>4.7%</td>
<td>2.7%</td>
<td>1.2%</td>
<td>3.4%</td>
<td>100%</td>
</tr>
<tr>
<td>Prison population (including foreign nationals)</td>
<td>72.8%</td>
<td>14.4%</td>
<td>7.2%</td>
<td>3.4%</td>
<td>1.7%</td>
<td>0.5%</td>
<td>100%</td>
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Source: Statistics on Race and the Criminal Justice System 2008/09
* = population estimates by ethnic group, from ONS for mid-2007

Research evidence and criminal justice statistics demonstrate that people from BAME groups are disproportionately represented at each stage of the criminal justice process from initial contact to sentencing to parole and release processes.

In relation to BAME communities and policing, stop and search practices remain the crucial litmus test. Recent figures for England and Wales show that the rate of stop and search among black people is 7 times the rate among whites and among Asians it is more than twice the rate among whites. As suspects and defendants, people from BAME groups, compared to their white counterparts, are also:

- more likely to be arrested
- less likely to be cautioned
- more likely to be prosecuted
- less likely to get bail
- more likely to receive longer prison sentences for similar offences.

Since the Police and Criminal Evidence (PACE) guidelines were introduced, the use of stop and search has increased exponentially; from 100,000 to 1,126,258 in 2008/09. The use of Section 60 of the Criminal Justice and Public Order Act has grown over 282% in the period between 2005 and 2010.

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Section 60 is deployed against Black people 27 times the rate of whites, Schedule 7 (which allows police at ports and airports to detain and question a person, for up to 9 hours without reasonable suspicion or the right to a lawyer) affects Asians 42 times the rate of white people. When these figures are compared to arrests made, a worrying picture emerges. Only 2% of arrests for violent crime can be attributed to section 60 stops and only 4% result in any arrest at all. Counter-terrorism legislation like use of Schedule 7 has led to less that 1% of arrests. These figures have given BAME communities a cause for concern and have left Muslim communities feeling persecuted and harassed by the state.

Between 1995 (49,542) and August 2010 (85,173), the prison population in England and Wales grew by an astonishing 35,631 or 71.9%. This rise has been attributed mainly to the increased use of immediate custodial sentences and those recalled to prison for breaching conditions of their licence. In 1997 there were 11,200 people from BAME groups in prison and this figure rose to 22,292 or 99% in 2009.

This statistical reality confirms the existence of disproportionality. The implications of this however, extend beyond the criminal justice system. It is well documented that the experience of the criminal justice system exacerbates the economic vulnerability and further contributes to the social marginalisation of BAME offenders and ex-offenders. There are many other statistics relating to decisions made in the criminal justice process that might reveal over and under-representation of BAME groups. These include, arrest, prosecution, diversion, bail, sentencing, treatment in prison, deaths in custody, parole, mental health and BAME offenders, BAME women in the criminal justice process, resettlement, BAME representation on Independent Advisory Groups and BAME voluntary sector. These statistics are important.

for monitoring and holding criminal justice agencies to account for their decisions.

**Other challenges to consider**

The list below is merely an indicative list of some existing and other emerging challenges surrounding race issues in criminal justice.

**Data**

So far, the issue about proportion in relation to BAME groups has been debated and discussed without any resolution. Research and analyses have shed some light on the complexities surrounding disproportionality in stops and searches. Elsewhere in the criminal justice process, disproportionality indicates the possibility of differential treatment at any given point in the system but it does not prove discrimination. However, disagreements over what 'disproportionality' should be measured against have persisted over time. Data sources such as Crime Surveys, criminal justice performance data, administrative data from National Offender Management Service (NOMS) and other departments of the Ministry of Justice are all problematic. Problems in relation to collecting and accessing race related performance management data still exist. To link the existence of disproportionality to direct or indirect discrimination it is important that data categories on offences are accurately recorded, consistently used by all agencies and are accessible in a timely manner to allow for meaningful comparisons.

In the absence of satisfactory methods to address disproportionality in the criminal justice system it is useful to consider alternative approaches. For instance, monitoring outcomes for different groups is a better way of demonstrating how different groups experience decision-making at different points of the criminal justice process. The Prison Service has successfully used this method through using SMART (systematic, monitoring and analysing of race equality template) data to better understand how different ethnic groups experience and progress through the prison regime. All agency

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data could similarly compare outcomes for different ethnic groups in relation to the total caseload or intake of that particular agency. This would allow for better aggregation of data at a local level and help to make each stage of the process more accountable.

**Policing priorities and elected crime commissioners**

For BAME communities trust and confidence in policing needs more than the present focus on developing a diverse workforce.9 It is important for policing to consider fair and equitable treatment and outcomes in policing BAME communities. The "Big Society" goal of an empowered community willing to work locally with police to fight crime depends on police activity being perceived by individuals and groups to be proportionate, effective and legitimate. Further proposals to change stop and search and elected crime commissioners has important implications for communities and the police and risk undermining legitimacy and accountability. If there are deficits in the participation of different ethnic groups in national democratic processes the policing white paper does not make it clear what processes will be put in place to ensure that marginalised groups are not excluded from local decision-making and priority-setting activities.

**Commissioning environment**

As part of its Modernising Commissioning agenda the UK coalition government made a commitment in 2010 to, "support the creation and expansion of mutuals, co-operatives, charities and social enterprises, and enable these groups to have much greater involvement in the running of public services".10 More than a year later and despite this commitment, third-sector organisations, some more than others, are finding it difficult to cope amidst funding cuts and lack of opportunities in the new commissioning environment.

BAME organisations have experienced difficulties in adapting to changes in the funding landscape. Case-studies funded by Clinks, through the Tackling Race Inequalities Fund (TRIF) suggest that some BAME organisations

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supporting offenders find themselves in a sub-contractual relationship with a prime contractor and struggle to keep up with performance and management requirements. BAME organisations also experienced problems in securing bids and if they did, there were additional problems with delayed payments and over-stretched resources. More evidence needs to be collated on how the BAME third-sector experiences the prime/sub-prime contracts and to what extent it is disadvantaged in competing for contracts.

In giving consideration to Payment By Result (PBR) and Integrated Offender Management (IOM) initiatives the prospects of involving smaller, specialist BAME organisations is less clear. It has been accepted that IOM initiatives that provide multi-agency support and activities with a supervisory element, for short-term prisoners, have had a positive impact on reducing re-offending. Together with the emphasis on 'localism', IOM initiatives can be effective if they engage with communities at a local level and harness the vital contributions of voluntary sector organisations to reduce re-offending. So far the engagement of the third-sector in IOM initiatives has been driven by operational necessity rather than as a strategic partner. This aspect in relation to engagement and partnership with BAME organisations needs further development.

**Identity and space**

The third sector in the UK comprises a variety of organisations that deliver a range of services across government and contribute to policy development in significant ways. Contributions of the third sector in crime prevention, resettlement of offenders and reducing re-offending are widely acknowledged by government and private funders. The BAME third sector is recognised as a part of the wider third sector. Its contributions in linking government policy initiatives and service delivery to BAME groups remain, however, to be fully recognised. Insufficient funds and limited ability to influence decision-making continue to dominate the experiences of BAME third-sector organisations.

Recent research publications from the Third Sector Research Centre (TSRC) demonstrate a concerted attempt to map, classify and understand the nature
and number of third-sector organisations working with offenders. Approximately 20,000 third-sector organisations currently work with offenders through the seven resettlement pathways. Despite these attempts not much is known about BAME organisations working in the criminal justice sector. While gaps in knowledge still persist in relation to the number and nature of BAME third-sector organisations working specifically with offenders, changes in the operating environment have further marginalised an already under-funded sector.

The lack of a distinct identity that is acknowledged both by the statutory and third-sector organisations further undermine BAME organisations and the interests that they represent. These organisations emerged, over the years, in response to unfair treatment and to address the specific needs of BAME offenders in the system. In providing services to offenders they have addressed diverse and complex needs and contributed to policy-making aimed at addressing racial disparity in criminal justice. What sets them apart from mainstream organisations is their ability to provide culturally sensitive and appropriate services and interventions. Yet these organisations find it difficult to establish, occupy and assert their unique space.

**Concluding observations**

There are several other challenges that merit further discussion; limited capacity to influence policy development, loss of grants and insufficient reserves, negative experiences of work with criminal justice agencies, lack of resources to prove outcomes and impact and more. BAME organisations play a vital role in addressing disproportionality by preventing re-offending and helping offenders resettle. Diversion strategies, restorative approaches, targeting interventions that match risks and needs for offenders, offering culturally and religiously appropriate services and opportunities for resettlement are some ways in which BAME organisations are redressing the balance in the system. These initiatives, however, need to be funded, allowed to develop and their outcomes fully investigated and understood.