**Do we need more Insight or Action ?**

For many the Lammy report tells us much of what we already knew.The report highlights fundamental racial disparities in the dispensation, administration and dissemination of justice. Amongst black communities, there is a crisis of both trust and confidence in the Criminal Justice System. The report appears to conclude the criminal justice system remains arbitrary, inconsistent and discriminatory. However, it does not provide adequate guidance in terms of what action will and should be taken as a result of the insight. What is clear is that a lot more research needs to be done and this requires funding. It seems unlikely to attract further resources. However, has the report provided sufficient insight for meaningful action to be taken ?

We must adopt a holistic view when identifying the causes of and solutions tothe over-representation of BME’s in the criminal justice system. The review appears to acknowledge that there are many reasons beyond the criminal justice system for these ethnic disparities. I believe there is a link, correlative if not casual, between crime, education and unemployment. This was among other reasons cited by Farrington, and Dallaire. A 2005 study found that the educational outcomes of prisoners were significantly poorer than those in the general population[[1]](#footnote-1). And more recently, 47% of newly sentenced prisoners surveyed for the SPCR(spell it out) longitudinal study[[2]](#footnote-2) show that 52% of male offenders and 72% of female offenders have no qualifications whatsoever[[3]](#footnote-3).

Black children are far more likely to grow up in a lone-parent family and black and ethnic mixed boys are more likely to be permanently excluded from school. BAME groups also have much higher incidence of mental illness. All of these are linked to higher rates of offending.  The courts are often one of the final forums in the criminal justice system.

If we are to address disparity and unfairness we need to look at the process in its entirety. The review specifically excluded the police from its remit, given the already acknowledged high levels of ethnic disproportionality arising from police stop and searches and arrests. This means that the review is based to a large extent on a specially-commissioned statistical analysis which sets out to measure rates of disproportional outcomes for different ethnic groups at a number of stages of the criminal justice process; from Crown Prosecution Service (CPS) decisions to bring charges, through various court outcomes, and treatment in prisons.

The problem with this approach is that it produces snapshots of disproportionality at selected stages in the process and an episodic and somewhat disjointed analysis of the criminal justice process, rather than looking at the overall system effect in producing differential outcomes for the various ethnic groups. It also carries an implication that those making decisions at later stages in the process have no role or responsibility for seeking to redress unfair treatment of particular groups at earlier stages. In fact I think research should be done on the correlation between the lack of education, exclusion and crime. Addressing the root cause of the disparities is the only long term solution to eradicating it

There are important questions raised by Lammy’s review about the insufficient emphasis on rehabilitation in prisons and the increased support needed for younger prisoners generally. It also raises an important dilemma about balancing the fair treatment of offenders with the needs of victims for justice and protection – it must be remembered that black people are disproportionately more likely to be victims of violent crime. We need to understand better racial prejudice in society and how it affects BAME people, while being more rigorous in our analysis of the way institutions treat BAME groups.

I believe that the cause of over-representation in the criminal justice system of specific groups is due to under-representation and a lack of diversity amongst people administering justice. At present, people from black and ethnic minority groups make up over a quarter of prisoners in England and Wales, but only 14% of the wider population. Figures also show that 61% of offenders from black and ethnic minority backgrounds receive jail sentences, compared to 56% of white offenders for the same crime.

The Lammy Review provides strong evidence regarding the lack of BAME representation in various criminal justice institutions, with perhaps one notable exception of the CPS. The data he produces on the unequal treatment of BAME applicants in the judicial appointments process is particularly alarming. Many of his recommendations deal with steps that seek to remedy such under-representation (of which those relating to judicial appointments are likely to be the most strongly resisted by the legal establishment) and to improve systems for further monitoring ethnic disproportionality in other aspects of the criminal justice system. But continuous measuring of the extent of such disproportionality will not in itself bring about change, especially where the onus for such change is placed on the institutions themselves.

There remains an issue in relation to the progression of BAME practitioners at the Bar, with only 6% of QCs declaring that they are BAME (compared with 12% of the practising Bar) and 90% declaring that they are white. These figures are the same as they were in 2014.

This indicates an issue in relation to the progression of BAME practitioners at the Bar. Diversity in the law is imperative to improving the legal and government infrastructure in the UK. If a judge, barrister, solicitor or police officer cannot relate to the ordinary people who rely on them to provide justice, can justice really be just? This does not mean having token people in play for optical pleasure, as this may potentially have a knock on effect on their democratic legitimacy. Those who feel unheard and unrepresented will not engage and participate with the democratic process. These people are likely to feel that the legal system does not operate to protect or promote their interests. This lack of engagement facilitates, or is at least complicit, in perpetuating the over-representation of those same disenfranchised groups in the criminal justice system. This, in turn, creates a reluctance on the part of BAME communities to engage with the establishment and perform invaluable public services.

The legal system appears to be evolving somewhat. The Sentencing Council has published new guidelines for the sentencing of children and young people which came into force as of 1 June 2017. One of the new requirements will be for judges to consider the over-representation of BAME children in the youth justice system and to take into account particular factors, which arise in the case of children in this group.

I established Urban Lawyers, with the aim to make the law (in its academic, practical and career contexts), more accessible to marginalised groups in society. Other similar initiatives are emerging, particularly at universities. The University of Manchester have established ‘Black Lawyers Matter’, to address the under-representation of young black men studying law amongst others.

Although it is encouraging to see changes and initiatives such as these, we still have a very long way to go before we will see a real impact on the lives of BAME people in our communities.

## Although I do believe that there is a correlation between the low number of lawyers and judges of colour and the high number of prisoners of colour, it should be made clear that I am not suggesting that by changing the complexion of those working in the system necessarily that it will alter its class base or bring about the radical changes in its structures, policies, processes and priorities that are required to tackle the ethnic disadvantages that it continues to perpetuate. But that may assist in incrementally moving along the process and achieving that end goal.

I do believe that there is an inverse relationship between the number of BAME lawyers and judges and the number of BAME prisoners. However, it should be made clear that I am not suggesting that changing the complexion of those working in the system will necessarily bring about the radical changes that are needed to tackle the ethnic disparities it perpetuates. An increased number of BAME legal professionals will, nonetheless, help to alter the class base of the system and bring about the changes in policies, processes and priorities that are necessary, with the additional benefit of enabling BAME communities to feel more represented.

Arguably the report could have made stronger recommendations but maybe the inability to do so can be attributed to the fact that the report does not provide an examination across the whole of the social experience of BAME lives. Without this holistic view it is very difficult to understand the role of the specific set of administrative procedures that make up the criminal justice process.

It is questionable whether developing an evidence-based appreciation of the institutional processes, no matter how thorough, will lead to either a rounded understanding of this disproportionality, or produce strategies for overcoming it. Which poses the question: do we need more action, or do we need more insight? If the latter than it should be more insight, into why this disparity arises , more insight into the lives of BAME people and all the explicit and implicit racism that impacts them and ultimately causes disparities that are visible to all.

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1. Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/278837/prisoners-childhood-family-backgrounds.pdf [↑](#footnote-ref-1)
2. Ministry of Justice (2012) *The pre-custody employment, training and education status of newly sentenced prisoners* London: MoJ [↑](#footnote-ref-2)
3. https://www.theguardian.com/society/joepublic/2010/feb/03/prison-education-training-low-skills [↑](#footnote-ref-3)