

Realising rights: increasing ethnic minority women's access to justice

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zohra moosa developed and led Seeing Double, Fawcett's three year flagship programme on race, gender and ethnic minority women's rights in the UK, since its inception in 2006. For more information about the programme or to download any of its publications, please see: www.fawcettsociety.org.uk/seeingdouble

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Foreword

Over the last decade, there has been a greater focus on the needs of women as victims, offenders and workers in the criminal justice system. There have also been some important changes taking place to improve the position of ethnic minorities in the justice sector. However, there has been less focus on the distinct needs of ethnic minority women and the intersectional discrimination on the grounds of race and sex that these women face.

Southall Black Sisters has struggled to make the rights of ethnic minority women visible over the last three decades. Feminist dialogue on violence against women has risen up the political agenda, in part due to the innovative work of the End Violence against Women Coalition. This culminated in November 2009 in the launch of the Government's violence against women and girls strategy. However despite these developments, violence against ethnic minority women is still frequently ignored altogether or else relegated to the race and community cohesion agenda.

This report highlights the extent of the problem and shines a spotlight on ethnic minority women's experiences across the criminal justice system –as women accused or convicted of crime, female victims of crime and women working in the justice system. It demonstrates the importance of moving away from silo thinking which looks at race and gender in isolation; filling the evidence gaps around the experiences of ethnic minority women in the justice system; and listening to ethnic minority women to understand what they need to realise their rights.

Change is happening but it is disappointingly slow. This report is a valuable reminder that both research and policy must engage with ethnic minority women so that real change in practice continues.



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Executive summary

- 1 in 3 women in prison is an ethnic minority woman
- There is only 1 ethnic minority woman in the senior judiciary
- 1 in 4 ethnic minority women experience domestic violence in their lifetime

The criminal justice system has been found to be both institutionally racist and institutionally sexist.¹ Over the last decade, there has been improved policy development acknowledging the disadvantages faced by ethnic minorities in the criminal justice system on the one hand and the experiences of women as victims, offenders and workers in the justice sector on the other. However, these interventions have tended to build on the experiences of ethnic minority men and White women respectively. As a result, the needs of ethnic minority women, which can be quite different from both of these groups, are frequently rendered invisible.

Ten years on from the Stephen Lawrence Inquiry and five years since the first ethnic minority female judge was appointed to the High Court, this report seeks to spotlight the experiences of ethnic minority women in the criminal justice system. It examines the experiences of ethnic minority women throughout the system exploring the intersectional discrimination on the grounds of race and sex that these women frequently face and the realities of a justice system which too often overlooks the needs of ethnic minority women in policy development and practice.

Ethnic minority women's experiences as offenders and suspects

Ethnic minority women face the same barriers that a man-made prison estate brings for all women. Too many women continue to be imprisoned on short sentences for non-violent crime with devastating effect on their lives and those of their dependents. However, ethnic minority women also endure additional barriers as a result of their race. Ethnic minority women, and particularly foreign national women, are

¹ See Commission on Women and the Criminal Justice System, *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*, The Fawcett Society, May 2009 & Sir William Macpherson of Cluny, *The Stephen Lawrence Inquiry: Report of an Inquiry*, <http://www.archive.official-documents.co.uk/document/cm42/4262/sli-00.htm>, February 1999.

Executive summary

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overrepresented within the female offender population and are more likely to feel isolated in custody, less likely to seek help and face additional language and cultural barriers to getting the help and support they need both within prison and upon release.

- 29 percent of the female prison population is made up of ethnic minority women.²
- 19 percent of female prisoners were foreign nationals in 2009.³
- 26 percent of ethnic minority women reported victimisation by prison staff compared to 16 percent of white women.⁴
- Ethnic minority women are more likely to be remanded into custody than white offenders.⁵

Ethnic minority women are also less likely to receive appropriate support on release from custody and more likely to be affected negatively by stereotypes in police custody and during the court and sentencing process. Analysis of women's needs as suspects and offenders in the criminal justice system frequently fails to take into account the differentiated needs of ethnic minority women. These needs can range from specific dietary needs, to the availability of information as to legal rights in different languages, to the specific health needs of ethnic minority women. Too often criminal justice policy responses bundle all female offenders into the same category rather than recognising the differentiated needs of women according to their different experiences as well as the intersection between inequalities such as race and gender.

² This includes women categorised as 'BME' by the Home Office, as well as women categorised as 'White Irish' and 'White Other': p.171: *Statistics on Race and the Criminal Justice System- 200*, Home Office, 2007/8.

³ P.22: *Bromley Briefings*, 2009, op cit.

⁴ Thematic report by HM Inspectorate of Prisons, *Race relations in prisons: Responding to adult women from black and minority ethnic backgrounds*, March 2009.

⁵ *Women in Prison magazine*, Autumn 2009.

Ethnic minority women's experiences working in the justice system

Ethnic minority women are under-represented as workers within the criminal justice system, particularly at senior levels. However, addressing barriers to the participation and promotion of ethnic minority women in particular within the justice sector remains a largely unexplored area. Ethnic minority women working in the police, legal profession, judiciary, probation and the prison service are frequently missing altogether from analysis of under-represented groups which tends to focus on either race or gender in isolation. Ethnic minority women's experiences of double discrimination in the workplace from racial and sexual harassment are also largely invisible.

- As of March 2009, only 0.2 percent of police officers at Chief inspector grade and above were ethnic minority women.
- At the end of 2008, ethnic minority women made up only 3.8 percent of the total number of self-employed barristers.⁶
- Women working in private practice earned 28.9 percent less than men in 2008. This gap appeared unaffected by ethnic background.⁷
- There is only one ethnic minority female High Court judge and none in the Court of Appeal or Supreme Court.
- There are 36 ethnic minority women judges as compared to 700 female judges and 2901 male judges. Ethnic minority women therefore make up just 1 percent of judges while they constitute over 5 percent of the population.⁸
- Only 7 percent of women working in the prison service are from an ethnic minority background.⁹

⁶ The Bar Council, Table One: *Number of barristers in self-employed practice by ethnic group and gender (excluding pupils): as at December 2008*

⁷ See The Law Society, *Gender and Earnings in Private Practice: Findings from the 2008 Salary Survey*, The Law Society, June 2009 and The Law Society, *Ethnicity and Earnings in Private Practice, Findings from the 2008 Salary Survey*, The Law Society, June 2009. Note: the sample size

was identified as too small to support any reliable analysis of the effect of ethnicity.

⁸ Judiciary of England and Wales, Statistics - Minority Ethnic Judges in Post, As at 1st April 2009 - <http://www.judiciary.gov.uk/keyfacts/statistics/ethnic.htm>. Note: Figures are based on known ethnicity.

⁹ *Statistics on Women and the Criminal Justice System*, Ministry of Justice, January 2009.

Executive summary

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Ethnic minority women face the barriers imposed by institutional sexism which all women experience across the criminal justice sector. However, ethnic minority women also face additional hurdles such as: covert and structural racism within the justice system; the limited number of role models for ethnic minority women; the ineffectiveness of current mechanisms for addressing racial and sexual harassment; and the failure to address the disproportionately lower retention rates of staff from ethnic minority backgrounds. Ethnic minority women are frequently overlooked and invisible in terms of their needs and skills while simultaneously being overly scrutinised in terms of their performance.

Ethnic minority women's experiences as victims and survivors

There is a dearth of information on the experiences of ethnic minority women as victims and survivors of violence. While ethnic minority women will face similar obstacles to all women resisting violence, the way that ethnic minority women perceive and experience violence and their pathways to engaging with the justice system and seeking help may be, in many respects, unique to their communities. Factors such as language, community and family structures, racism and culture will all impact on the experiences and needs of women surviving violence.

In recent years, there has been an increased acknowledgement of violence against ethnic minority women particularly in relation to so-called harmful traditional practices and also domestic violence. On the one hand, this increased focus has led to some important developments within the criminal justice sector to address these crimes. However, on the other, it has allowed the Government and criminal justice agencies to attribute responsibility for violence against ethnic minority women to 'cultural attitudes' rather than addressing such violence as gender-based and responding to it as such. This racialised categorising of violence excuses violence against ethnic minority women, ignores the specific needs of women experiencing intersectional discrimination on the grounds of race and sex, and has frequently undermined a broader understanding of ethnic minority women's experiences of violence.

- Nine out of ten local authorities have no specialist ethnic minority service for women who have experienced violence.¹⁰
- 1 in 4 ethnic minority women experience domestic violence during their lifetime.
- In 2008 the Forced Marriage Unit had over 1,600 reported cases of forced marriage¹¹
- It has been estimated that nearly 66,000 women with female genital mutilation (FGM) were living in the UK in 2001, and over 20,000 girls could currently be at risk.¹²
- 30 percent of gun crime victims are young females, compared to 2-5 percent of these crimes having female suspects.¹³

The cost to society of violence against ethnic minority women has been estimated to be at least £1.5 billion.¹⁴ However, while research has clearly demonstrated the necessity of support provision led by and for ethnic minority women, ethnic minority women's organisations remain under-valued and under-resourced. Further, the response from statutory agencies demonstrates a particular lack of understanding of the needs of ethnic minority women: nine out of ten local authorities have no specific provision for ethnic minority women who have experienced violence and where services do exist they tend to be concentrated in metropolitan areas.¹⁵

¹⁰ M Coy, L Kelly & J Foord, *Map of Gaps 2: The Postcode Lottery of Violence Against Women support services in Britain*, End Violence Against Women and Equality and Human Rights Commission, p.25.

¹¹ HM Government, *Together We Can End Violence against Women and Girls: A Strategy*, Home Office, <http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/end-violence-against-women?view=Binary>, November 2009.

¹² FORWARD, *A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales*, October 2007. A further study is currently being conducted which should provide a more up-to-date indication of the

prevalence of FGM using data from maternity and other specialist services – see <http://www.forwarduk.org.uk/news/news/562>.

¹³ J. Pitts, 'Violent Youth Gangs in the UK', *Safer Society*, Pp. 14-17, Spring 2007, pp.14-17.

¹⁴ *Hard Knock Life, Violence against women, a Guide for Donors and Funders*, New Philanthropy Capital, 2008. This is likely to be a low estimate given the lack of information.

¹⁵ M Coy, L Kelly & J Foord, *Map of Gaps 2: The Postcode Lottery of Violence Against Women support services in Britain*, End Violence Against Women and Equality and Human Rights Commission, p.25.

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Recommendations

Robust thinking on race and gender is essential to increase ethnic minority women's access to justice. Policy makers, criminal justice agencies and the justice sector need to take the following steps to improve the responsiveness of the justice system to the needs, experiences and rights of ethnic minority women.

1. Move Away from Silo Thinking

The challenges facing ethnic minority women in the criminal justice system are often missed because agencies and policymakers assume that a focus on 'women' or 'ethnic minorities' is an adequate way of combating race and sex discrimination. Evidence reveals this is not borne out in practice as ethnic minority women sit at the intersection of race and gender, facing discrimination on both grounds. Therefore, targeted criminal justice interventions which focus on White women or ethnic minority men fail to address the different needs of ethnic minority women and the impact of multiple discrimination on these women.

Evidence collection and disaggregation of data is an important step in moving away from silo thinking. The disaggregation of statistics is a fundamental requirement in all UN policies and is also a legal obligation under the Gender Equality Duty and the Race Equality Duty. Data must be collected that can be disaggregated on the basis of both gender and race and used to inform policy and practice.

2. Fill the Evidence Gaps

There is a real information gap on the experiences of women in the criminal justice system. Statistics are, at times, collected on the gender or race of victims of crime, workers in the justice system; and suspects and offenders, but there is frequently a complete lack of information as to the intersection between race and gender, let alone the experiences of women from different ethnic backgrounds. Evidence that is collected is frequently patchy, inconsistent and confused.

On many issues, such as ethnic minority women's experiences of sexual violence or the health needs of ethnic minority female offenders, there is a dearth of information. Policy makers and criminal justice agencies must prioritise evidence collection in their strategies to ensure their plans are relevant and suitably targeted to ethnic minority women's needs and to ensure the representativeness of their workforce.

3. Listen to Ethnic Minority Women

When faced with a system which remains both institutionally sexist and institutionally racist, ethnic minority women face an uphill battle to make their views heard. This is compounded by the limited number of ethnic minority women in senior positions within the justice sector.

Criminal justice agencies need to consult ethnic minority women and learn from their experiences and draw on best practice initiatives already in operation. The system also needs to make use of the resources and expertise of specialist ethnic minority women's organisations. Further, a criminal justice workplace culture which embraces diversity in its workforce and utilises the skills and experiences of ethnic minority women is essential to create a responsive, reflective and representative justice system.

There is a need for an in-depth needs assessment of vulnerable ethnic minority women's experiences of the justice system as victims, offenders and workers to highlight the gaps and to identify the support which is most effective for ethnic minority women. This should involve consultation with ethnic minority women and specialist service providers and must take into account the preferred pathways of ethnic minority women for engaging with the justice sector.

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Recommendations (continued)

Less Talk, More Action

Equality tools already exist which should lead to strong policy development and informed practice. Tools such as the equality duties on public bodies, proposed provisions in the Equality Bill such as positive action and dual discrimination, and the UK's international obligations under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) have the potential to transform the criminal justice system for ethnic minority women. These equality obligations need to be understood, utilised in policy development and implemented in practice.

The Government must assume leadership in ensuring policy is translated into practice and that there is adequate investment in specialist services and programmes for ethnic minority women. Changing mindsets through training on the needs of ethnic minority women and the meaning of substantive equality is also crucial for real change in practice. There must be an embedded understanding that ethnic minority women should not be treated the same as men or the same as women from different ethnic backgrounds but rather that each individual should be treated appropriately according to their distinct needs - whether accused or convicted of crime, accessing justice as a victim or survivor of crime, or working within the criminal justice system.

Ethnic minority women's experiences of the criminal justice system are a reflection of broader trends in society.¹⁶ Tracking their struggles to access justice reveals severe marginalisation from mainstream social policy and public institutions. Through gaps in the criminal justice system, ethnic minority women are being disenfranchised as:

- suspects and offenders
- workers
- victims, survivors and resisters of violence

There are three key reasons for this: their needs are invisible as policy deals with race and gender in silos; there is a surprisingly significant lack of evidence on their experiences; and their perspectives and experiences are not heard in policy arenas.

Silo thinking

The criminal justice system has been found to be both institutionally sexist¹⁷ and institutionally racist.¹⁸ Targeted interventions seeking to address these challenges tend to make generalisations about all women or all ethnic minorities. This is not surprising given the scale of the challenges in achieving equality for each of these groups. Nevertheless, the result is that work on women within the criminal justice system tends to build on the experiences of White women; work on ethnic minorities meanwhile focuses on the realities of ethnic minority men. Ethnic minority women's needs, which can be different from those of both White women and ethnic minority men, fall through the cracks and are rendered invisible. Differences between individual ethnic minority women, then, have virtually no chance of being addressed.

¹⁶ This report uses the term 'ethnic minority' rather than 'Black and minority ethnic' (BME) or 'Black, Asian, Minority Ethnic and Refugee' (BAMER). This term was adopted by the Commission for Racial Equality and Fawcett uses this term to mean all groups of people living in Britain who cannot readily be identified with the White British population. However, it should be noted that available data often excludes white minority groups.

¹⁷ Commission on Women and the Criminal Justice System, *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*, The Fawcett Society, May 2009.

¹⁸ Sir William Macpherson of Cluny, *The Stephen Lawrence Inquiry: Report of an Inquiry*, <http://www.archive.official-documents.co.uk/document/cm42/4262/sli-00.htm>, February 1999.

Chapter 1 Continued

Introduction

Evidence gaps

The lack of evidence on the specific experiences of ethnic minority women within the justice system is both a cause and a consequence of these generalisation and invisibility challenges. On many issues, such as ethnic minority women's experiences of sexual violence, there is a complete dearth of robust information. On others, such as on female genital mutilation (FGM), research and statistics are available, but they are extremely limited. As a previous Fawcett report noted¹⁹, it is common for data on ethnic minority women to be:

- Patchy – with many authorities still not collecting or not disaggregating statistics by both gender and ethnicity.
- Inconsistent – where definitions of who is an ethnic minority changes (e.g. sometimes including White ethnic minorities and sometimes not) or categories of minorities change (e.g. using the term 'Asian' to mean South Asians sometimes, and all Asians at other times).
- Confused – as analysts oscillate between using ethnic minority men and White women as comparators.

Listening to ethnic minority women

When ethnic minority women are the specific and visible subjects of public policy discourse, it is usually in negative or stereotypical ways, as Fawcett's *Seeing Double: race and gender in ethnic minority women's lives* collection reveals.²⁰ In terms of women and the criminal justice system, this has included disproportionate attention on forced marriage and honour killings. While these issues are obviously important, the ways in which ethnic minority women have been discussed in relation to them are problematic. For example, recent analysis by Fawcett has shown that media portrayals of ethnic minority women's experiences with domestic violence rely on stereotypes and are a typical example of this pitfall.²¹ The reason for this is that commentators tend to speak *about* ethnic minority women instead of to them, and it is rare for ethnic minority women to be allowed to speak for themselves.

¹⁹ zohra moosa and Katherine Rake, *Harnessing the power of difference: race, gender and the future workplace*, The Fawcett Society, June 2008.

²⁰ zohra moosa (Ed), *Seeing Double: Race and gender in ethnic minority women's lives*, The Fawcett Society, March

2008.

²¹ zohra moosa, "Race' and Domestic Violence in the Media', *The Runnymede Bulletin*, No 354, Pp 23-5, June 2008.

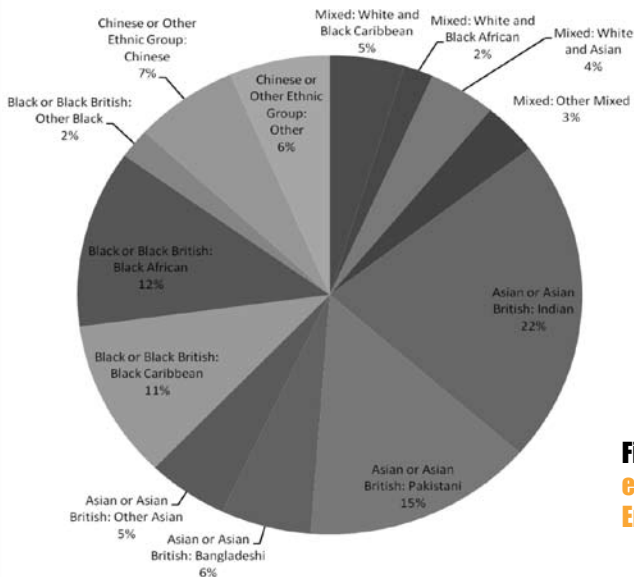


Figure 1 - Diversity of female ethnic minority population in England, 2007²³

Listening to ethnic minority women also means recognising that ethnic minority are not a homogenous group. Figure 1 shows the ethnic breakdown of women living in England. However, despite this diversity, the Government and criminal justice agencies have tended to fail to recognise diverse needs in analysis and the provision of services. This has included ignoring how the experiences of ethnic minority women differ according to their individual characteristics. For example, ethnic minority lesbians face unique barriers. Young and old ethnic minority women also have very different experiences of the criminal justice system. This report has primarily concentrated on the experiences of adult ethnic minority women and has not therefore focused on the experiences of young women and girls in detail. This is an area requiring urgent examination and we welcome the groundbreaking research being undertaken by ROTA.²²

The context – racism and the criminal justice system

This report is positioned within the wider context of a criminal justice system in which there remains over-policing of ethnic minority groups. Ethnic minority people continue to be over-represented in stop and search rates. In 2008, Black people were seven times more likely to be stopped and searched by police than their White counterparts.²⁴ Ethnic minority people remain over-represented in the prison population and face continual barriers as staff working within criminal justice agencies. Issues which were raised in the Stephen Lawrence Inquiry have not been picked up in a widespread way

²² <http://www.rota.org.uk/pages/FVV.aspx> - see Chapter Four for discussion.

²³ Table EE4_PCO2007 : *Estimated resident population by ethnic group, age and sex, mid-2007, Population Estimates by Ethnic Group for Primary Care Organisations and Strategic Health Authority areas in England*, Office for National Statistics.

²⁴ Nicola Rollock, *The Stephen Lawrence Inquiry 10 Years On: A Critical Review of the Literature*, Runnymede Trust Report, February 2009.

²⁵ *Ibid.*

Chapter 1 Continued

Introduction

and progress has been disappointing.²⁵ When ethnic minority groups are the subject of the press or public attention around crime and justice it is usually in a negative or stereotypical way. It is in this context that an understandable distrust of the criminal justice system and experience of racist practices and procedures continue to inhibit the positive engagement of ethnic minorities with the criminal justice system.

This report

Realising Rights aims to provide a roadmap for how the criminal justice system can do better. It highlights the main challenges in the system with respect to appropriately supporting ethnic minority women suspects and offenders, workers, and victims, survivors and resisters of violence. It brings together some of the key sources of information that do exist, and highlights where some of the ongoing gaps are. It explains how robust thinking on race and gender is essential to serving ethnic minority women, and sets out examples of best practice which illustrate the practical ways this can be done – from policy to practice.

Chapter 2 covers the offender pathway, discussing ethnic minority women suspects and offenders' experiences of the system.

Chapter 3 reviews the system from an employment and representation perspective, highlighting ethnic minority women workers' experiences.

Chapter 4 takes on the resister pathway within the justice system, discussing the experiences of ethnic minority women victims and survivors of violence.

Chapter 5 outlines how equality tools can be employed within the criminal justice system to meet the needs of ethnic minority women.

Chapter 6 pulls together a series of practical recommendations for policy makers and practitioners.

Chapter 2

Offending: ethnic minority women's experiences as suspects and offenders

Nearly one third of women in prison in England are from ethnic minority backgrounds.²⁶

Introduction

Ethnic minority women offenders are overrepresented in the prison population generally and in the female estate in particular. The reasons for their overrepresentation are a function of the way they are approached and treated throughout the criminal justice process. From the way they are handled at the police station right through to court room decisions, ethnic minority women are treated unfavourably because of the combined effects of sexism and racism. This chapter travels the offender pathway to identify the ways that ethnic minority women suspects and offenders are treated unfairly, and what needs to change.

At the police station

Since 2003, Fawcett's Commission on Women and the Criminal Justice System has highlighted the problems that women suspects face while in police custody.²⁷ These include:

- **Poor facilities:** a lack of cleanliness, cold temperatures in cells, the absence of sanitary protection, showers and even water to clean teeth undermine women's legal rights to privacy, personal integrity and dignity.
- **Perceptions of safety:** considering the very high number of women suspects that have been abused by men, the lack of women police officers in areas of custody is inappropriate and can lead to an atmosphere of intimidation.
- **Caring responsibilities:** women who are mothers and carers continue to be detained in custody without police officers determining what arrangements have been made for their children or others they are caring for.
- **Mental health diversions:** although a high proportion of women suspects have acute mental health care needs, women who need mental health care are not being consistently identified and diverted from custody at this initial stage.

²⁶ Thematic report by HM Inspectorate of Prisons, *Race relations in prisons: Responding to adult women from black and minority ethnic backgrounds*, March 2009.

²⁷ *Engendering Justice*, op cit.

Chapter 2 Continued

Offending: ethnic minority women's experiences as suspects and offenders

For ethnic minority women, many of these challenges are exacerbated by barriers they also face as a result of their race. For example, research has found that police officers are more accommodating and supportive of women who fit their gender stereotypes about how women 'ought' to behave when facing arrest. These stereotypes, however, are based on white middle class sensibilities. Where ethnic minority women's behaviour deviates from these stereotypes, then, they are penalised and treated more harshly. Indeed, one study found:

*Discretion was exercised more liberally in favour of non-arrest with white women than black women.*²⁸

Concerns about dependents are also likely to be magnified for some groups of ethnic minority women as they are particularly likely to be single mothers. For example, more than half of Black African and Black Caribbean families in the UK are headed by a lone parent, compared with less than a quarter of White families.²⁹

*“I had been treated very badly by the police. I think it has to be down to my ethnic origin. I am Asian and the police were quite racist while handling my case. I have been a victim of racial discrimination and also as I am a woman they had a very, very intimidating attitude towards me.”*³⁰

²⁸ Ruth Chigwada-Bailey, *Black women's experiences of the criminal justice. Race, gender and class: a discourse on disadvantage*, Waterside Press, 2003, p.47.

²⁹ Prison Reform Trust, *Bromley Briefings: Prison Factfile*, www.prisonreformtrust.co.uk, November 2009.

³⁰ Questionnaire Response, Female Offender, Evidence collected for Fawcett's Commission on Women and the Criminal Justice System, 5 January 2009.

At court

How able ethnic minority women are to manage the court process and have access to fair judgement depends on a number of factors that are outside their knowledge, control and influence. For example, Fawcett's work has shown that many women do not know their legal rights, including how they might secure appropriate legal advice.³¹ For ethnic minority women, who may already be wary of the criminal justice and legal system because of their disproportionately negative impact on ethnic minority communities,³² this knowledge gap may be even wider.

Ethnic minority women who are not British nationals face additional barriers in understanding how the system works. Work with women who have been trafficked, for example, has shown that they are at risk of over-criminalising themselves if they do not receive good legal advice. Although defence lawyers are obliged to conduct enquiries to establish whether their defendants could be a victim of trafficking, the Poppy Project has confirmed that women are pleading guilty to charges because evidence about their trafficking has not been raised in their defence.³³

At sentencing

Gender discrimination within the criminal justice system leads to women being severely sentenced for non-violent crimes.³⁴ Overly punitive responses to drug offences is one concrete example of this problem and there is evidence suggesting that ethnic minority women are additionally and disproportionately caught up in the prison system because of the way the sentencing regime for drug offences is designed. The prison-focused approach to drug offences is based on a deterrent model of the justice system and harsh prison sentences are currently applied to both drug trafficking and drug supplying offences. However, as the HM Inspectorate of Prisons notes, this deterrent model appears to be failing with respect to female drug couriers. Harsh penalties are not reducing the number of drug trafficking offences and this is the category of offenders that ethnic minority women are disproportionately found in (see Table 1 and 2 below).

³¹ *Engendering Justice*, op cit.

³² *BME Communities' Expectations of Fair Treatment by the Criminal Justice System*, Criminal Justice System, <http://www.ipsos-mori.com/Assets/Docs/Archive/Polls/cjs-report.pdf>, September 2005.

³³ *Engendering Justice*, op cit.

³⁴ *Engendering Justice*, op cit., Pp.20-21.

Chapter 2 Continued

Offending: ethnic minority women's experiences as suspects and offenders

Many of these women convicted of drug smuggling are single mothers from a background of extreme hardship and are first time offenders. For example, 73 percent of foreign national women in an inspectorate survey stated that it was their first time in prison, compared with 43 percent of British nationals.³⁵ These women are rarely high up in the criminal gangs involved in drug trafficking and abusive and exploitative relationships often play a part in their offence. There remains a lack of robust information about the sentencing of foreign national women. The work by the Sentencing Advisory Panel, therefore, on whether current drug trafficking sentences are appropriate and the introduction of guidelines on this area could make a significant difference to the number of ethnic minority women inappropriately sentenced to prison.³⁶

Proportions of women imprisoned for drug offences³⁷

Table 1: **British nationals**

	White	Ethnic minority
Unlawful drug supply (40%)	48 %	18 %
Drugs unlawful import/export (35%)	22 %	69 %

British nationals made up 65 percent of those imprisoned for drug offences, of which 73 percent were White and 26 percent ethnic minority.

Table 2: **Foreign nationals**

	White	Ethnic minority
Unlawful drug supply (83%)	89 %	81 %
Drugs unlawful import/export (10%)	8 %	10 %

Foreign nationals made up 35 percent of those imprisoned for drug offences, of which 19 percent were White and 81 percent were ethnic minority.

³⁵ *Bromley Briefings*, November 2009, op cit.

³⁶ Thematic report by HM Inspectorate of Prisons, *Race relations in prisons*, op cit.

³⁷ Thematic report by HM Inspectorate of Prisons, *Race relations in prisons: Responding to adult women from black and minority ethnic backgrounds*, March 2009.

There is also literature suggesting that racism within courts could contribute to harsher sentencing for ethnic minority women suspects. For example, cultural expectations about how a defendant should appear, dress and behave that are based on white middle class sensibilities will negatively affect ethnic minority women who have 'different' hair, wear different kinds of clothes, or who speak or act differently. One study on probation reports found that whereas White mothers were asked about the fathers of their children in order to establish how supportive the fathers were, Black mothers were asked in order to establish whether they had histories of 'promiscuity' and 'unstable relationships'.³⁸

In prison

As with women overall, ethnic minority women's experiences of life in prison are a cause of serious concern. Ethnic minority women face some of the same challenges that all women face, including inconsistent support on reception into custody, risk of self-harm and poor access to mental health support, and significant and unnecessary disruption

Proportions of women imprisoned for drug offences

Table 3: **Self-reported experiences of prison life**³⁹

	White women	Ethnic minority women
Victimised by staff	16 %	26 %
Respected by staff	77 %	63 %
Access to daily shower	87 %	81 %
Treated fairly in the incentives and earned privileges (IEP) scheme	54 %	42 %
Out of cells for more than 19 hours a day	23 %	16 %
Had association at least 5 times a week	58 %	47 %

³⁸ *Black women's experiences* of the criminal justice op cit. p.47.

³⁹ Thematic report by HM Inspectorate of Prisons, *Race relations in prisons: Responding to adult women from black and minority ethnic backgrounds*, March 2009.

Chapter 2 Continued

Offending: ethnic minority women's experiences as suspects and offenders

to family and community life.⁴⁰ In addition, however, ethnic minority women face several other severe challenges as a result of the racism they experience combining with this general sexism. These challenges mean that their experiences of prison life can be even worse than those of White women (see Table 3).

The needs of ethnic minority women in prison are generally not served, though guidance does exist. Examples can seem trivial to those not affected: hair oil for Black women is generally treated as a luxury in prison, but is actually felt to be an absolute necessity for many women's sense of dignity. Different dietary needs and preferences are another example, which the prison service has helpfully recognised.⁴¹ Some ethnic minority women also face language barriers which can have a significant impact on their understanding of prison policy and procedure, and subsequently their rehabilitation. For example, if women cannot understand literature provided on reception into custody they will face heightened anxiety. This problem is compounded by a lack of bilingual prison staff and there are concerns that staff often lack cultural awareness which would enable them to better understand and respond to women's needs.

Other issues are more widely known but not necessarily any better addressed. For example, the location of female prisons across the country (in rural areas) as compared to where most ethnic minorities live (in urban centres) means that ethnic minority women receive fewer visits than White women, which contributes to their higher levels of isolation and subsequently increased levels of depression.⁴² Ethnic minority women may also be less likely to receive specialist support while in prison to deal with the trauma of past violence and abuse because of the dearth of specialist services that exist for ethnic minority victims of violence even outside prisons.⁴³ Research has revealed the high proportion of women offenders who have a background of abuse and the need for this victimisation to be addressed in order to break the re-offending cycle.⁴⁴ The criminal justice system, as a major intervention in the lives of women offenders, has a crucial role to play in coordinating the contribution of specialist and voluntary sector agencies in order to help ethnic minority women deal with past abuse.

⁴⁰ *Engendering Justice* op cit.

⁴¹ *Women Prisoners*, Prison Service Order number 4800, 28 April 2008.

⁴² *Engendering Justice* op cit.

⁴³ See Chapter Four.

⁴⁴ Dr Judith Rungay, *When Victims Become Offenders: In Search of Coherence in Policy and Practice*, London School of Economics, 2004.

Previous work has also revealed that British-born Black women prisoners in particular are more likely to face harsh treatment, abuse and excessive force by prison staff because of racism. Specifically, stereotypes that Black women are 'noisy' and 'aggressive', and also troublemakers, were found to prevail amongst workers. The same behaviour in other women, for example being loud, was not seen as inherently troublesome and was therefore not responded to with the same level of force.⁴⁵

Female Prisoner's Welfare Project – Hibiscus

Hibiscus was founded in 1990 to meet the specific requirements of Black Ethnic Minority and Foreign National women in prison.

The Project works to ensure that women prisoners understand the workings of the British criminal justice system. Hibiscus helps women on release access suitable services such as local support agencies and counselling and provides guidance on relevant issues such as immigration, benefits, housing, health, and employment. Throughout their custodial process, women prisoners are helped to sustain and strengthen relationships with their families and dependants. Hibiscus offers additional avenues of support through their 'befriending' scheme, recruiting volunteers to call on women prisoners. The strong links between the Hibiscus' UK office and its branch in Jamaica, coupled with the organisation's international contacts, enables foreign national women to make contact with their children more easily.

www.hibiscuslondon.org.uk/

⁴⁵ Ruth Chigwada-Bailey, *Black women's experiences of the criminal justice. Race, gender and class: a discourse on disadvantage*, Waterside Press, 2003, p.47.

Chapter 2 Continued

Offending: ethnic minority women's experiences as suspects and offenders

Foreign national women make up one in five of the female prison population.⁴⁶ For these women, custody brings additional hardship. They may have an exacerbated fear of custody because of their perception or experience of incarceration in their home countries. Additionally, foreign national women face added barriers to sustaining communication with family and friends due to distance and high international call costs. There is also emerging evidence of foreign national women who have been trafficked into prostitution being criminalised and jailed for holding false documents.⁴⁷

Lord Bradley in his recent review noted that “mental health problems disproportionately exist for BMEs...”⁴⁸, however; there has been little examination of the mental health needs of ethnic minority women. For example, a recent study into the health of female prisoners, which revealed that 83 percent of female offenders in the study had a longstanding illness, did not distinguish the different health needs of ethnic minority women.⁴⁹

Although self harm in the ethnic minority female prison population is lower than in the White female prison population, this is not a reason for overlooking the mental health needs of ethnic minority offenders. Rather research suggests that minority prisoner groups have different needs and face different risks. A Home Office study into substance misuse found that drug dependence was associated with deliberate self harm for ethnic minority women but not for White women.⁵⁰ There are also certain illnesses which ethnic minority women are particularly susceptible to and the likelihood that ethnic minority women may suffer mental illness is increased by the fact that they are more likely to be exposed to risk factors such as living in a city, being under financial strain and feelings of isolation and displacement.⁵¹ The National Institute for Mental Health in England has begun work to develop a ‘prison mental health BME strategy’ and this must include careful analysis of the mental health needs of ethnic minority women within the prison system.

⁴⁶ Bromley Briefings, November 2009 op cit.

⁴⁷ *Engendering Justice*, May 2009, op cit., p.38.

⁴⁸ Lord Bradley, *Lord Bradley's Review of People with Mental Health Problems or Learning Difficulties in the Criminal Justice System*, April 2009.

⁴⁹ E Plugge et al, *The Health of Women in Prison Study Findings*, Department of Health, University of Oxford, 2007.

⁵⁰ The Home Office, *The Substance Misuse Treatment Needs of Minority Prisoner Groups: Women, Young Offenders and Ethnic Minorities*, Home Office Development and Practice Report No. 8, 2003.

⁵¹ Thematic report by HM Inspectorate of Prisons, *Race relations in Prisons*, op cit. p.14

On release

*These women face the same barriers in accessing services to help them alter their lives and in resettlement on release from prison as white women but they are further disadvantaged by racial discrimination, stigma, isolation, cultural differences, language barriers and lack of employment skills.*⁵²

The lack of support ethnic minority women receive in prison extends to their experiences of preparing to exit. Again, ethnic minority women face a series of challenges that they share with all women. For example, they are likely to have lost their home while in prison, and may face difficulty accessing housing once out of prison; particularly as ethnic minority women are more likely to have come from high-density city centres that have acute housing problems.⁵³ Racism is likely to compound this: the difficulties all ex-offenders face in securing housing is coupled with the fact that ethnic minorities are more likely to face challenges accessing housing, or to be allocated poor housing when they do have access.⁵⁴

Ethnic minority women may also face the 'catch 22' that other women face where they cannot gain custody of their children without having secured appropriate housing, but cannot secure appropriate housing if they cannot prove they have children they will be caring for. Prejudices against some groups of ethnic minority women around how well they care for their children, such as the stereotype that Black Caribbean women are not good mothers, may also make it more difficult for ethnic minority women to regain custody of their children.

⁵² Baroness Jean Corston, *Corston Report*, Home Office, March 2007, p.27.

⁵³ Thematic report by HM Inspectorate of Prisons, *Race relations in prisons*, op cit.

⁵⁴ A Gill & B Banga, "Black, minority and refugee women, domestic violence and access to housing", *Better Housing Briefing*, October 2008

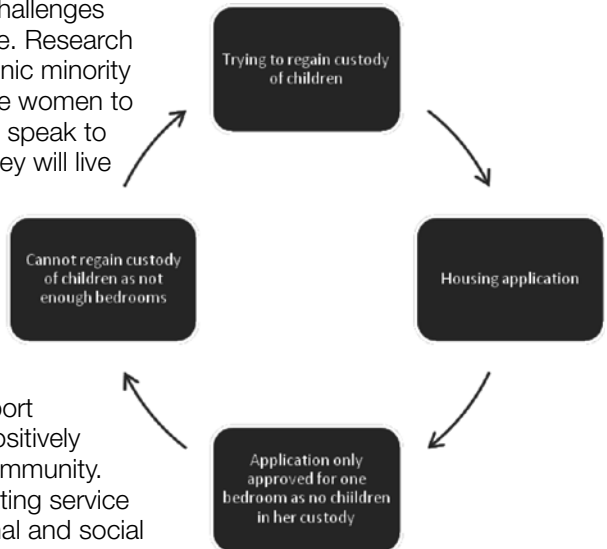
Chapter 2 Continued

Offending: ethnic minority women's experiences as suspects and offenders

In addition to these shared obstacles, ethnic minority women face particular challenges on release as a result of their race. Research has shown, for example, that ethnic minority women are more likely than White women to not even know who they need to speak to within prison to discuss where they will live on release.

The distance of their families from prison, and the resulting paucity of visits this produces, means that ethnic minority women often lack the family and friend connections and support they need on leaving prison to positively re-establish themselves in the community. Reintegrating into society, navigating service providers, managing the emotional and social work of starting anew, creating new prospects for oneself: these all require a significant amount of energy and motivation. The severing of familial and social bonds through imprisonment far from home means that many ethnic minority women are left vulnerable and without adequate support on their release. Foreign national women face additional challenges due to their often uncertain immigration status which will impact on the services they can access upon release and can also result in women being held in custody beyond their release date because of immigration red tape.

Figure 2 The Housing Catch 22



Ethnic Minority Women 'Through the Gates' Service – Women in Prison

Women in Prison's 'Through the Gate' service offers holistic support to women released from prison and is available three months prior to release dates. Notably, this service offers a specialist community-based support project for ethnic minority women offenders and ex-offenders. Women in Prison also provides a similar support project that caters for the specific needs of women under the age of 25 who have been implicated in gang-related violence. Specialist BME support workers can also be accessed through the 'London Project', a service providing those women most at risk of receiving a custodial sentence with targeted support.

www.womeninprison.org.uk/

Conclusion

The ways that racism and sexism interact in ethnic minority women's lives means they face unique barriers as suspects and offenders throughout the criminal justice system. While all women are subjected to problematic treatment, ethnic minority women's access to fair justice is compromised even further. As a result of this unfair treatment, they are more likely to face custody and harsh legal punishments, they are overrepresented in the prison population and the female estate, their experiences while in custody are often more severe than those of White women, and they are disadvantaged on release from prison, undermining their ability to rehabilitate and ultimately re-integrate into society.

Chapter 3

Working: ethnic minority women experiences as law enforcers and service providers

Introduction

Ethnic minority women are under-represented as workers within the criminal justice system, particularly within senior positions. However, barriers to the participation and promotion of ethnic minority women and their experiences of working in criminal justice agencies remain a largely unexplored area.

There has been growing debate as to why the participation of women in the justice sector and the promotion of the rights, skills and experiences of women are important. There has also been some acknowledgement of the disadvantages faced by ethnic minorities working in the justice system and the need to address the under-representation of these groups. However, there has been little recognition of the experiences of ethnic minority women who often face barriers to career development and promotion on the grounds of both race and gender, experience double discrimination in the workplace such as racial and sexual harassment, and are frequently missing from analysis of under-represented groups which tends to focus on either race or gender.

This chapter will examine the representation of ethnic minority women within each of the criminal justice agencies and will highlight existing barriers and gaps in understanding surrounding the experiences of ethnic minority women as workers within the justice system.

“The recruitment of more black females will not dispel the deep rooted gender problems, but it is a change mechanism and will assist in the change process.”⁵⁵

⁵⁵ M Gittens, *What About Us: Black Women in Policing research paper*, Part 1, National Black Police Association Women's Group, August 2004.

The representation of ethnic minority women – creating a responsive, reflective and representative justice system

The participation of ethnic minority women in the justice sector, particularly at senior levels is crucial:

- Justice needs to be responsive and accessible to all citizens. The victims, witnesses, suspects and offenders coming into contact with the justice system are all of diverse backgrounds – across gender, race, class, religion, disability and sexual orientation. Staff, particularly at higher levels, need to be equally diverse so that the justice system is seen as relevant and responsive.
- Ethnic minority women's experiences of justice and of everyday life frequently differ from those of men and also differ among ethnic groups. The participation of ethnic minority women is essential to ensure understanding of different needs and experiences and to bring different approaches and view-points to issues.
- The increased participation of ethnic minority women in the justice sector is also important in breaking down gender roles more generally. The increased visibility of ethnic minority women and the emergence of female role models can help to debunk stereotypes and re-shape gender roles.

This section explores the representation of women within each of the criminal justice agencies, the legal profession and the judiciary. It is important to note at the outset that one of the significant problems with tackling under-representation is the lack of reliable statistics giving the full picture of the workforce. Typically, individuals are only asked to provide information on their ethnicity on a voluntary basis and often ethnicity of a large part of the sample is unknown. Further, information is often collected on ethnicity and gender separately with no integration of this data. Therefore ethnic minority women are often a missing statistic. This is a fundamental problem and one which public bodies are legally obliged to address under the public sector duties and under international obligations which require the disaggregation of statistics.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

The Police

The proportion of ethnic minority officers (both uniformed and plain-clothed) had doubled from two percent in 1999 to 3.9 percent in 2007. However, this is a far-cry from the Home Secretary's 1999 target, as a result of the Lawrence Inquiry, of seven percent by 2009.⁵⁶ Further, when the proportion of ethnic minority female officers is considered the results are starkly disappointing. As of March 2009, there were only five ethnic minority women chief inspectors out of a total 1,990; one ethnic minority female superintendent out of 1,058 superintendents; and one ethnic minority female chief superintendent out of 508. Ethnic minority women continue to be concentrated in the police staff ranks and therefore lower paid positions (see Table 4).⁵⁷

These statistics paint a picture of a system where the under-representation of women and the under-representation of ethnic minority officers combine to create double barriers for ethnic minority women entering the police force.

Table 4: **POLICE OFFICER BY RANK (31 March 2009)**

Rank	Total staff	Female	Ethnic Minority Female	Ethnic Minority Female as % of all staff
Constable	110,231	30,801	1,402	1.3%
Sergeant	22,776	3,780	103	0.5%
Inspector	7,488	1,100	25	0.3%
Chief Inspector	1,990	293	5	0.3%
Superintendent	1,058	120	1	0.1%
Chief Superintendent	508	60	1	0.2%
ACPO	223	35	1	0.4%

⁵⁶ J. Bennetto, *Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report*, Equality and Human Rights Commission, January 2009, p.13.

⁵⁷ M Gittens, *What About Us*, op cit.

“All women, whether police officers or police staff, have the same aspirations as their male colleagues. The perception that women need to have a proven record or need to be “one of the boys” to further their careers often acts as a barrier, preventing staff from demonstrating their full potential and abilities”

Home Office Minister Tony McNulty, Women in Policing Workshop, 7 February 2007⁵⁸

Good policies appear to be developing in relation to equality and diversity in the police service. However, evidence collected by Fawcett’s Commission on Women and the Criminal Justice System revealed that too often this policy is not being translated into practice and remains conditional upon the interpretation of individual line management.⁵⁹ A sexist and racist culture remains the real experience of many ethnic minority women. Further, the long working hour’s culture, demands of shift work and specialist roles which continue to be male dominated restrict promotion opportunities for women, especially those with caring responsibilities. As one woman working in the police told Fawcett’s Commission, *“I am an Asian female, and through my service I have suffered racism as well as sexism, and have challenged the behaviour formally. This has taken alot out of me. I do feel that as a Black Officer and a female I have to work twice as hard as white officers in order to be accepted.”*⁶⁰

The Legal Profession

The numbers of women and ethnic minorities entering the law has been steadily increasing. In 2007-08, 63.4 percent of new trainees registered were women and 20.9 percent of trainees with known ethnicity were drawn from ethnic minority groups.⁶¹ Solicitors from ethnic minority groups accounted for 10 percent of all solicitors with practising certificates, and 9.5 percent of all solicitors in private practice. During the same period, women accounted for 44.4 percent of solicitors with practising certificates and 42.1 percent of all solicitors in private practice. As Table 5 demonstrates the majority of female solicitors with practising certificates are from a White/European background with only 12.8 percent drawn from ethnic minority groups.

⁵⁸ Questionnaire Response, Female Police Officer, Commission on Women and the Criminal Justice System, December 2008.

⁶¹ The Law Society’s Annual Statistical Report, 2008, <http://www.lawsociety.org.uk/secure/file/180111/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/asr2008report.pdf>.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

The numbers of women and ethnic minorities decreases markedly in senior positions. In 2008, just over 14 percent of partners in the top four firms were female and 15.9 percent of partners in the UK's 10 largest firms were women.⁶² In 2006, ethnic minorities made up only six percent of partners in private practice and in the top 20 law firms just four percent of partners were from an ethnic minority background.⁶³ In the latest Diversity Table published in 2008 by the Black Solicitor's Network just six of the 41 firms that participated had black partners.⁶⁴ Anecdotal evidence from members of the Black Solicitors Network suggests that many solicitors from an ethnic minority background believe that they cannot progress to partnership level without leaving their firm and gaining experience elsewhere. This suggests ethnic minority solicitors may not be receiving adequate support to progress or that they may be required to develop greater human capital than other groups to achieve promotion.⁶⁵

Women working in private practice earned 28.9 percent less than men in 2008. After controlling for a range of factors, such as experience and grade, it emerged women were earning six percent less than men due to being female, with about eight percent attributable to direct discrimination by employers.⁶⁶ A basic ethnicity pay gap of around 18 percent existed in private practice in 2008 but this overall difference was attributed to differences in work situations and the type of work taken rather than discrimination.⁶⁷ Interestingly, although the sample size was small, among women no median pay gap for annual earnings was evident as a result of ethnic background. In comparison White male solicitors earned 33 percent more than ethnic minority male solicitors.⁶⁸

⁶² The Lawyer UK 200 Annual Report, September 2008 - <http://www.thelawyer.com/cgi-bin/item.cgi?id=134440&d=415&h=417&f=416>.

⁶³ Nina Goswami, Outside the Box, The Lawyer, <http://www.thelawyer.com/outside-the-box/126136.article>, 28 May 2007.

⁶⁴ Diversity League Table 2008, A Report from the Black Solicitors Network, p.9

⁶⁵ Ibid. p.9.

⁶⁶ The Law Society, Gender and Earnings in Private Practice: Findings from the 2008 Salary Survey, The Law Society, June 2009.

⁶⁷ The Law Society, *Ethnicity and Earnings in Private Practice, Findings from the 2008 Salary Survey*, The Law Society, June 2009.

⁶⁸ Ibid. p.3. Note: The sample size was identified as too small to support any reliable analysis.

Table 5: **ETHNIC ORIGIN OF PRACTICING CERTIFICATES AS AT 31 JULY 2008**⁶⁹

SOLICITORS	NUMBERS			PERCENTAGES		
	Male	Female	Total	Male	Female	Total
White/European	49,409	37,996	87,405	79.0	76.1	77.7
African-Caribbean	220	529	749	0.4	1.1	0.7
Asian	2,895	3,452	6,347	4.6	6.9	5.6
Chinese	426	697	1,123	0.7	1.4	1.0
African	487	646	1,133	0.8	1.3	1.0
Other ethnic group	811	1,086	1,897	1.3	2.1	1.7
Total ethnic minority	4,839	6,410	11,249	7.7	12.8	10.0
Unanswered/refused	8,276	5,503	13,779	13.2	11	12.3
Total	62,524	49,909	112,433	100	100*	100

*Due to rounding this figure is 99.9 percent.

Women and ethnic minorities are also under-represented at the bar. As at December 2008, there were 461 ethnic minority female barristers in self-employed practice (only 3.8 percent of the total number of self-employed barristers).⁷⁰ Representation among Queen Counsels is also low, with only six ethnic minority female QCs in self-employed practice out of a total 1,273 QCs.⁷¹ Worryingly in 2008-09 (see Table 6), the numbers of applications from women and ethnic minorities for QC were at their lowest in ten years.

⁶⁹ The Law Society's Annual Statistical Report, 2008
 - <http://www.lawsociety.org.uk/secure/file/180111/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/asr2008report.pdf>.
 Note: The provision of ethnic information is optional, but is known for 87.7% of practicing certificate holders.

⁷⁰ The Bar Council, Table One: *Number of barristers in self-employed practice by ethnic group and gender (excluding pupils): as at December 2008*, <http://www.barcouncil.org.uk/assets/documents/Self%20Employed%20Bar%20excl%20Pupils%20by%20Ethnicity%20and%20Gender%20Dec%202008.pdf>, 2008.

⁷¹ The Bar Council, *Table Three: Number of QC's in self-employed practice by ethnic group and gender: as at December 2008*, <http://www.barcouncil.org.uk/assets/documents/Self%20Employed%20Bar%20QC's%20by%20Ethnicity%20and%20Gender%20Apr%202009.pdf>, 2008.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

Table 6: **QUEEN'S COUNSEL IN ENGLAND AND WALES, 2008⁷²**

	1994	1995	1996	1997	1998	
Total applicants	539	492	488	500	511	
Total awards	77	71	66	68	60	
Female						
Applicants	43	42	40	41	46	
Awards	9	8	4	5	10	
Ethnic Minority						
Applicants	11	12	14	12	18	
Awards	1	1	1	1	4	

Within the Crown Prosecution Service (CPS), women constitute 67 percent of all staff and are well-represented across all grades. However, women still tend to have the highest representation within junior positions, with women making up 74 percent of staff at Level B & below compared to only 40 percent of legal grades Level D & above.⁷³ Staff from an ethnic minority background remain under-represented and constitute approximately 15.1 percent of staff.⁷⁴ It is difficult from this to determine the numbers of ethnic minority women working within the CPS because although the CPS provides data on the gender, ethnicity and disability breakdown of this workforce, we could not find any breakdown which considered the combination of race and gender.

⁷² Queen's Counsel in England & Wales 2008, Old -v- new scheme - comparative statistical information, 2009, <http://www.justice.gov.uk/news/docs/queens-counsel-2008-09-statistics.pdf>.

⁷³ *Statistics on Women and the Criminal Justice System*,

Ministry of Justice, January 2009.

⁷⁴ CPS's Workforce Diversity Data Annual Report, 2007-08, http://www.cps.gov.uk/publications/humanresources/equalopsstats/2007-2008.html#_01. Note: Percentages are limited to those who declared their ethnicity.

	1999	2000	2001	2002	2003	2006	2007/08	2008/09
	553	506	456	429	394	443	333	247
	69	78	77	113	121	175	98	104
	49	53	51	44	39	68	51	29
	9	10	10	12	9	33	20	16
	30	24	19	19	23	24	22	15
	5	3	3	7	7	10	4	4

The recession is also feared to be having an adverse effect on diversity in the legal profession. For example, concerns were raised that unprecedented competition for jobs in the legal profession as a result of the recession was having a disproportionate impact on ethnic minority applicants. According to the Chair of the Society of Black Lawyers: “Employers are less likely to take risks and minorities – including women – are perceived as being a risk.”⁷⁵ Further, recent proposed cuts to legal aid provision for private law family cases are likely to have a disproportionate effect on female barristers, and in particular ethnic minority female barristers, who undertake the majority of family law legal aid work.⁷⁶

⁷⁵ Peter Herbert, Chair of the Society of Black Lawyers, quoted in “Recession puts small community law firms under threat” *The Guardian*, 2 March 2009.

⁷⁶ C. Baksi, “Family barristers protest at cuts”, *The Law Gazette*, 11 March 2009.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

The Judiciary

The lack of diversity in the Judiciary has been a major concern for Fawcett's Commission on Women and the Criminal Justice System for the past five years. This failure of the Judiciary to reflect the composition of the UK population is particularly apparent when considering the representation of ethnic minority women. There is only one ethnic minority female High Court judge and none in the Court of Appeal or Supreme Court. There are 36 ethnic minority women judges as compared to 700 female judges and 2901 male judges. Ethnic minority women therefore make up just one percent of judges while they constitute over five percent of the population.⁷⁷

One of the key objects of the Judicial Appointments Commission (JAC) is to increase the diversity of applications to the judiciary and it has made some commendable progress to date. However, the JAC faces two considerable barriers when addressing under-representation of groups such as ethnic minority women. Firstly, the under-representation of ethnic minority women within the higher levels of the legal profession who are eligible to apply for judicial office; and secondly, the perception of the overwhelmingly 'White British male' culture of the judiciary.

Recent research into the barriers to application for judicial appointment revealed some interesting perceptions of factors influencing success for judicial appointment. 72 percent of respondents agreed that it was more difficult for certain types of people to apply successfully, with ethnic minority respondents and women in particular seeing being from an ethnic minority group or being female as a distinct disadvantage. Interestingly, in contrast, the research found that respondents from a White background or men saw being female or ethnic minority as an advantage suggesting "the imperative to increase diversity is [often viewed as] indistinguishable from positive discrimination."⁷⁸

⁷⁷ Judiciary of England and Wales, Statistics - Minority Ethnic Judges in Post, As at 1st April 2009 - <http://www.judiciary.gov.uk/keyfacts/statistics/ethnic.htm>. Note: Figures are based on known ethnicity.

⁷⁸ Anthony Allen, *Barriers to Application for Judicial Appointments Research*, prepared for the Judicial Appointments Commission, 2009.

The Probation Service

The Probation Service is a female dominated profession and has a significantly better representation of women at senior levels (with 19 women out of 40 chief officers of probation).⁷⁹ Further, as Table 7 demonstrates there are no significant differences between women and men in terms of the representation of ethnic minority groups and 12.9 percent of total staff come from an ethnic minority background. However, the probation service's data did not provide an analysis of the representation of women from ethnic minority backgrounds broken down by job group. This prevents an analysis of whether ethnic minority women remain concentrated within lower job grades – a significant data gap.

Table 7: **PROBATION SERVICE – ETHNIC REPRESENTATION BY GENDER (September 2007)** ⁸⁰

PROBATION SERVICE	PERCENTAGES		
	Male	Female	Total
White	85.8	87.1	87.1
Black	8.5	7.8	7.8
Asian	3.6	3.0	3.1
Mixed	1.4	1.7	1.5
African	0.7	0.4	0.5
Other	14.2	12.9	12.9
Total ethnic minority	4,839	6,410	11,249
Unanswered/refused	8,276	5,503	13,779
Total	100	100	100

⁷⁹ Human Resources Workforce Profile Report, Ministry of Justice, Issue 4, <http://www.probation.homeoffice.gov.uk/files/pdf/Workforce%20Profile%20Report%202006%20Issue%204.pdf>, September 2007.

⁸⁰ Human Resources Workforce Profile Report, Ministry of Justice, Issue 4, <http://www.probation.homeoffice.gov.uk/files/pdf/Workforce%20Profile%20Report%202006%20Issue%204.pdf>, September 2007, p.14.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

The Prison Service

Women make up 36 percent of total prison service staff; only 23 percent of officer grades; and 23 percent of Governor and equivalent grades.⁸¹ Women are therefore under-represented, particularly at senior levels. 93 percent of these women working in the prison service are White with only seven percent from an ethnic minority background. Consequently, in terms of the total staff composition, ethnic minority women remain starkly under-represented. Again, the data sets which consider ethnic breakdown by gender are top-line in nature and do not allow for an analysis of the representation of ethnic minority women in each job grade.

Addressing the under-representation of ethnic minority women and female staff more generally in prisons is crucial. Women offenders who have experienced past abuse should have access to female staff, and there are also a number of tasks, such as body searching and supervision of showering and changing, which can only be carried out by female staff members. Ethnic minority women holding positions of responsibility within the prison service can also provide important role models for female offenders, and staff from diverse backgrounds can help women overcome language and cultural barriers. As one woman from the prison service commented to Fawcett's Commission, *"For black and minority ethnic women, the biggest problem is communication and language barriers. I know we've got language line but there are not enough bilingual staff."*⁸²

Table 8: **THE PRISON SERVICE: ETHNICITY 2007-08**⁸³

PRISON SERVICE	PERCENTAGES		
	Male	Female	Total
Ethnic minority	6.0	7.0	6.2
White	94.0	93.0	93.8
Total	100	100	100

**Based on all staff whose ethnicity is known*

⁸² Questionnaire response, woman in the prison service, Commission on Women and the Criminal Justice System, January 2009.

⁸³ HM Prison Service, *Annual Staff Diversity Review: Management Summary 2007-08*, http://staging.hmprisonservice.gov.uk/assets/documents/10004639staff_diverity_review_08.pdf, April 2009, Pp 10-11.

Barriers to Progression within the Criminal Justice Agencies

Fawcett's Commission on Women and the Criminal Justice examined the barriers which women face working within the criminal justice system.⁸⁴ While specific problems were identified within each of the criminal justice agencies, key issues arose for women across the sector:

- Women's caring responsibilities continue to operate as a disadvantage in career progression, particularly with shift or on-call work. Training or promotion requirements often involve travel, long hours or require shift work.
- Women continue to be concentrated in lower paid roles.
- When flexible and part-time working arrangements are in place, they tend to be inconsistently applied by line management and are typically not seen as beneficial by other employees.
- A male dominated culture continues to exist across the criminal justice system with women having to prove themselves against male-defined standards.

Ethnic minority women encounter these elements of institutional sexism but also face additional barriers to participation and promotion than their counterparts from majority backgrounds, including: invisibility, covert and structural racism within the justice system, the limited number of role models for ethnic minority women, the ineffectiveness of current mechanisms for addressing racial and sexual harassment, and failure to address the disproportionately lower retention rates of staff from ethnic minority backgrounds.

Invisibility

A pilot research project conducted in 2003 on the barriers facing ethnic minority female police personnel concluded that ethnic minority staff had an overwhelming feeling of being over-looked and invisible in terms of their needs and skills on the one hand, while at the same time feeling overly scrutinised with pressure to constantly prove themselves in an atmosphere of 'quiet discouragement'.⁸⁵ Evidence suggests this is a common experience for many ethnic minority women working in the criminal justice system.

⁸⁴ *Engendering Justice* op cit.

⁸⁵ Dr Nirmal Puwar, *Pilot Research Project on the Barriers facing BME Female Police Personnel*, 21 September 2003.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

“The techniques of discrimination faced by BME female staff can be blatantly overt but many are subtle and latent. While being located on the inside . . . they are at the same time outsiders who occupy a tenuous position.”⁸⁶

Covert and structural racism

As a result of the Stephen Lawrence Inquiry, ‘institutional racism’ within the criminal justice system has become a familiar term. However, progress on race equality has been slow and there has been little focus on ethnic minority women. Research conducted by the Prison Reform Trust in 2006 on the views of ethnic minority employees in prisons revealed that covert and structural racism were more widespread causes of concern than blatant racist discrimination.⁸⁷ The study also found that racial discrimination was more likely to come from colleagues, which highlights the importance of changing attitudes and increasing awareness around diversity and cultural awareness within criminal justice agencies.

Structural racism remains a major problem within the criminal justice system – to such an extent that in October 2008 the Metropolitan Black Police Association began a boycott of all recruitment drives to encourage ethnic minority recruits and staff to join the Metropolitan Police on the basis that it would be wrong to encourage people to join a hostile and racist environment.⁸⁸

⁸⁶ Ibid.

⁸⁷ Prison Reform Trust, *Experiences of Minority Ethnic Employees in Prisons*, July 2006.

⁸⁸ See <http://www.timesonline.co.uk/tol/news/uk/article4886008.ece> 89 Ibid.

Challenging Discriminatory Practices

When faced with a system which remains both institutionally sexist and institutionally racist, ethnic minority women face an uphill battle. As marginalised voices within the system, it is difficult to expose sexist and racist practices, particularly as covert discrimination is difficult to challenge and prove. This is compounded by the limited number of role models for ethnic minority women within the justice sector.

Research has also demonstrated the ineffectiveness of current systems for responding to complaints about racism.⁸⁹ Staff who feel isolated in workplaces where there are few ethnic minority staff may be reluctant to report racism, particularly when complaints are investigated by senior staff who tend to be White. This is likely to be exacerbated for ethnic minority women, who may feel even more isolated and have even less representation at senior levels. Research into the barriers faced by female police personnel has also noted that anticipated backlash will often discourage ethnic minority women from reporting sexual or racial harassment, particularly given the 'clique buddy nature' of the police institutional structures.⁹⁰

Failure to address the low rates of retention of ethnic minority staff

Ethnic minority police officers have a higher resignation rate than White officers particularly in the first six months of service. 6.1 percent of those who resigned or were dismissed in their first six months of service in 2007 were ethnic minorities, in comparison to a rate of 3.1 percent for White officers.⁹¹ Retention also continues to be a problem in the prison service. For example, in 2004, although ethnic minority groups only comprised 5.41 percent of prison staff, the rate of resignation among them was seven percent.⁹² The Diversity League Table survey results evidence that this trend is also apparent in the legal profession. Evidence from firms who responded to the survey reveals women and ethnic minorities are disproportionately affected by the issue of retention – the percentage of women and ethnic minorities that resign is higher than the percentage that is promoted.⁹³

⁸⁹ Dr Nirmal Puwar, *Pilot Research Project*, op cit. p.3.

⁹¹ J. Bennetto, *Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report*, Equality and Human Rights Commission, 2009, p.14.

⁹² Prison Reform Trust, *Experiences of Minority Ethnic Employees in Prisons*, July 2006.⁹³ Diversity League Table 2008, A Report from the Black Solicitors Network, p.31.

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

Perceptions of the criminal justice system may affect the recruitment and retention of ethnic minority women. For example, working within the criminal justice system may be viewed negatively by members of the ethnic minority women's community – that it is 'selling' out to the system or going against cultural heritage.⁹⁴ Further, family or community members' racist or sexist experiences of the criminal justice system may also impact on recruitment.

The Need for Less Talk, More Action

The aptly named, "Less talk, more action" Minority Lawyers' Conference which was held in April 2009 highlights the crux of the problem. There has been development at the policy level but implementation, in terms of increasing the representation of ethnic minority women, particularly in the top ranks of the criminal justice sector, and measures for protecting women from discrimination are lacking.

There are some key steps which criminal justice agencies and law firms could take to promote equal opportunity and representation of ethnic minority women and address discrimination within the workforce:

- Include equal opportunity statements in recruitment advertisements.
- Target ethnic minority and women's groups in recruitment advertising, focusing on ethnic minority women in particular.
- Use the genuine occupational qualifications exception in relation to recruitment, training, promotion or transfer under section 7(2) of the Sex Discrimination Act to increase the number of female staff where they are required to undertake particular functions (such as searching within female prisons).

⁹⁴ An issue identified by focus groups, *BME Communities' Expectations of Fair Treatment by the Criminal Justice System*, The Criminal Justice System Race Unit, research commissioned from MORI, September 2005.

“Positive Action is not about diluting the requirement for excellence but is about redefining merit to reflect needed skills and experiences, which may have been traditionally excluded.”⁹⁵

- Promote part-time and flexible working and job-sharing options and positive action measures as provided for in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the UK has adopted.⁹⁶
- Establish targets for specific recruitment of certain groups.
- Tackle data gaps by actively encouraging applicants and staff to provide the fullest personal and demographic information possible and monitoring this data.
- Disaggregate data collected by gender and race.
- Produce benchmark retention statistics to consider the rates of turn-over of ethnic minority women in relation to the average.
- Provide access to mentoring and networking groups.
- Appoint a ‘chief diversity officer’ with appropriate seniority to ensure recommendations are acted upon.
- Provide appropriate avenues for reporting and responding to sex and race discrimination and harassment in the workplace as well as support mechanisms for women who have experienced discriminatory treatment and/or harassment.

⁹⁵ Positive action is discussed in more detail in Chapter Six.

⁹⁶ See discussion on CEDAW in Chapter Six. See also http://www.equalityhumanrights.com/uploaded_files/Equality%20Bill/postive_action_briefing.pdf

Chapter 3 Continued

Working: ethnic minority women experiences as law enforcers and service providers

Drawing on examples of best practice

Positive Action Programme – Leadership and Diversity

This programme aims to assist with the development of a more representative police workforce by encouraging officers and police staff from under-represented groups to remain in the Service and apply for development opportunities and progression. The training programme can be delivered to specific groups e.g. all ethnic minority or all female delegates, etc. or to a mixed audience of delegates from different under-represented groups.

www.npia.police.uk/en/1697.htm

Use of Targets - Eversheds

In the 2008 Diversity League Table Survey, law firm Eversheds set out its targets for increasing the representativeness of its workforce – increase its female trainee intake to 50 percent; female representation at partnership level to 20 percent; and meet the Law Society's recommended target of 10 percent ethnic minority trainee intake.

Black Solicitor's Network, *Diversity League Table 2008*.

Mentoring Scheme - Association of Asian Women Lawyers

The AAWL mentoring scheme assists those at all stages in the legal profession from pupillage / training contract to applying for a Queen's Counsel or a judicial appointment AAWL members can apply to benefit from the advice and guidance of mentor members and mentors are assigned based on areas of practice/interest.

www.aawl.org.uk/mentoring.html

Encouraging Diversity in Senior Positions – CPS

The CPS Law Scholarship Scheme continues to contribute to greater diversity within the CPS. This scheme provides financial support for career progression from administrator to prosecutor for CPS staff and covers a range of qualifications, from an A level in law to the LPC or BVC. Sponsorship covers 100 per cent of course fees, exam fees, a travel allowance and study leave. Each year approximately 70 percent of the scholars are women and 30 percent are from an ethnic minority group.

www.opportunitynow.org.uk/best_practice/exemplar_employers/training_and_development/case_studies/crown_pros_service.html

Creating a space for dialogue - Engaging Muslim Women Conference

Hosted by the National Association of Muslim Police in November 2008, this conference discussed Muslim female police employees' experiences of the service. Avenues of discussion included exploring ways in which the police service could improve its support of Muslim female employees on issues such as progression, development, retention and initial recruitment, whilst examining improvements that could be implemented to support their daily activities. 90 delegates of both Muslim and non-Muslim faith attended the conference including: police officers and staff, representatives of the police authority and local/community organisations, and members of the general public from the Muslim community. 90 percent of attendees were female.

www.namp-uk.com/images/stories/library_pdf/Female_Conference_Report.pdf

Conclusion

Ethnic minority women must be represented in all levels of the criminal justice system and in all types of roles. Criminal justice agencies need to consult ethnic minority women and learn from their experiences and draw on best practices initiatives already in operation. A workplace culture which embraces diversity in its workforce and utilises the skills and experiences of ethnic minority women is essential to create a responsive, reflective and representative justice system.

Chapter 4

Resisting violence: ethnic minority women's experiences as victims and survivors

Introduction

Research estimates that ethnic minority women are not more likely to be subjected to violence than other women in the UK.⁹⁷ However, the way that different groups of ethnic minority women experience and perceive violence and their interaction with the justice system may be, in many respects, unique to their communities. Factors such as language, community and family structures, racism and culture will all impact on the experiences and needs of survivors of gender-based violence.

Unfortunately, there is dearth of detailed information on the particular experiences of ethnic minority women resisting violence. While statistics are sometimes collected on the sex of victims of violence, and are also sometimes collected on the ethnicity of victims, it is quite rare for them to be disaggregated by ethnicity and sex respectively. As a result, it is virtually impossible to develop a robust picture.

There have been attempts recently to fill this picture out but in problematic and incomplete ways. Specifically, the Government has placed significant attention on tracking violence deemed to be 'cultural'. For example, we know that in 2008 the Forced Marriage Unit had over 1,600 reported cases of forced marriage⁹⁸ and it has been estimated that nearly 66,000 women living in the UK in 2001 had undergone female genital mutilation (FGM), and over 20,000 girls could currently be at risk.⁹⁹ Yet we know virtually nothing about ethnic minority women's experiences of violence where 'culture' is not invoked. For example, we do not know how many ethnic minority women report rape or domestic violence every year. As a result, the complete picture of ethnic minority women's experiences of gender-based violence remains unclear and largely overlooked.

Evidence from grassroots ethnic minority women's support groups reveals that this absence of information reflects a wider marginalisation of ethnic minority women

⁹⁷ Walby, S. and Allen, J. *Domestic violence, sexual assault and stalking: findings from the British Crime Survey*, Home Office research study no. 276, Home Office, 2004.

⁹⁸ HM Government, *Together We Can End Violence against Women and Girls: A Strategy*, Home Office, <http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/end-violence-against-women?view=Binary>, November 2009.

⁹⁹ FORWARD, *A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales*, October 2007. A further study is currently being conducted which should provide a more up-to-date indication of the prevalence of FGM using data from maternity and other specialist services – see <http://www.forwarduk.org.uk/news/news/562>.

survivors' needs within the criminal justice system. Further, ethnic minority women are susceptible to a racialised categorising of violence against them as being about 'culture' or 'ethnicity', rather than being identified as gender-based violence and responded to as such.¹⁰⁰ This chapter travels the victim pathway to identify how ethnic minority women are being treated unfairly, and what needs to change.

Barriers to seeking help and reporting violence

Unsurprisingly, the attitudes and stereotypes surrounding violence against women affect the willingness of victims to report. Crimes of rape and domestic violence have particularly low reporting rates. Women experiencing domestic violence often fear retaliation from the abuser, face difficulties leaving because of a lack of financial independence and fear being judged by the authorities and society. Survivors of sexual violence face similar fears of blame or disbelief, particularly if the rape was committed by someone known to the victim or alcohol was involved.¹⁰¹

Ethnic minority women face these barriers to accessing justice and support as well as additional marginalisation of their needs. Language barriers, a lack of understanding of the justice system or a mistrust of authorities may impact on whether an ethnic minority woman feels able to report violence. Women from marginalised communities may also experience pressure for violence to be resolved within their community, fearing reprisals such as losing access to their children, over-penalisation of their partners or families or being shunned by their family support network if outside help is sought. Added to this are fears of a racist response from criminal justice agencies and from wider society, often as a result of actual experiences, which can lead to ethnic minority women being very apprehensive about reporting violence.¹⁰²

Ethnic minority women also face additional barriers to reporting if they have an uncertain immigration status as they may fear being deported or losing access to their children if they do approach authorities. These fears may also be manipulated by abusive spouses as a controlling method to ensure women do not report to the police.

¹⁰⁰ See H. Siddiqui, "Making the Grade? Meeting the challenge of tackling violence against ethnic minority women", *Seeing Double – Race and Gender in Ethnic Minority Women's Lives*, Fawcett Society, March 2008

¹⁰¹ See *Engendering Justice*, May 2009, op cit., Pp. 45-48.

¹⁰² See R. Thiara, *The need for specialist domestic violence services for Asian women and children*, Imkaan, 2005 and A. Gill, 'Voicing the silent fear: South Asian women's experiences of domestic violence', *The Howard Journal*, Vol 43, No 5, pp.465-483, 2004.

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Resisting violence: ethnic minority women's experiences as victims and survivors

Women who have been trafficked for sexual exploitation or domestic labour may also be prevented from reporting violence because of restrictions to their movement, intimidation and a lack of access to information.¹⁰³

These barriers faced frequently go unrecognised by public authorities and lead to ethnic minority women being less likely to seek help and more likely to doubt the efficacy of the justice system as a means of meeting their needs.¹⁰⁴

At the Police Station – initial responses and investigation

Even when women make the brave decision to contact the police, evidence collected by Fawcett reveals that women's experiences are very much dependent on the individual officer's reaction to their complaint and follow-up care. While some women report positive experiences of dealing with the police and the investigation process, others report more negative experiences such as attitudes of dismissal and non-belief from investigating officers; having to re-tell their story up to five or six times; not having access to a female staff member; and a lack of contact from the police during the investigation.¹⁰⁵

While the development of a network of Sexual Assault Referral Centres (SARCs) is encouraging, with 29 SARCs now in operation and the Government committed to one per police area by 2011,¹⁰⁶ attitudes and expectations as to how a 'proper' victim should behave continue to shape the police response to violence against women. This is likely to be compounded for ethnic minority women who may be less likely to fit the 'proper' victim mould and more likely to be misunderstood because of a lack of cultural awareness and reliance on stereotypes by police.¹⁰⁷ Women who do not speak English as their first language will also face additional barriers at the outset and must be provided with interpretation support. A study into the experiences of South Asian women with no recourse to public funds revealed that two thirds were dissatisfied with

¹⁰³ *Engendering Justice*, May 2009, op cit.p.47.

¹⁰⁴ Women with no recourse to public funds face additional hurdles to seeking help. This is explored later in this chapter.

¹⁰⁵ *Ibid.* pp.45-53.

¹⁰⁶ HM Government, *Together We Can End Violence against Women and Girls: A Strategy*, Home Office, <http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/end-violence-against-women?view=Binary>, November 2009.

¹⁰⁷ See for example, zohra moosa, "Race' and Domestic Violence in the Media', op cit.

the service they received from the police on the grounds that their disclosure was not treated seriously, or their safety was not prioritised in that they were not informed of their options or assisted with accessing services.¹⁰⁸

Problems with the system failing to respond to the needs of women do not stop after the initial decision to report. A large number of women who shared their experiences with Fawcett revealed that they were disappointed with the contact maintained with them by the police and the CPS, particularly in relation to the decision to charge.¹⁰⁹ Cooperation between the police and the CPS is crucial in providing a joined up approach to victim care. This follow-up care is particularly important for ethnic minority women who are likely to already be apprehensive about engaging with the criminal justice system and who are less likely to receive support from their own communities. Due to the lack of information about victim profiles, it is impossible to gain an overall picture of the impact of ethnicity upon attrition rates in female victims. However, as a Crown Prosecutor told Fawcett's Commission:

“ I have experience of women from ethnic minorities being particularly vulnerable to retraction and lack of support from their own communities.”¹¹⁰

¹⁰⁸ Anitha, S. et al. *Forgotten Women: Domestic Violence, Poverty and South Asian Women with No Recourse to Public Funds*, Research Report, March 2008.

¹⁰⁹ *Engendering Justice*, May 2009, op. cit., pp.54-55.

¹¹⁰ Questionnaire Response, Crown Prosecution Service employee, evidence submitted to the Commission on Women and the Criminal Justice System, 2 December 2008.

Chapter 4 Continued

Resisting violence: ethnic minority women's experiences as victims and survivors

This is supported by a 2007 Review which looked at 677 rape allegations reported to the Metropolitan Police in April and May 2005, which revealed that while just under one in five allegations by White or Black victims resulted in a charge, only six percent of allegations by Asian victims resulted in a charge.¹¹¹

Negotiating the Court Process

The Crown Prosecution Service has identified the lack of disaggregation of data in relation to victims as a priority area requiring attention.¹¹² This is critical as the current lack of information which is recorded about victims makes it very difficult to track attrition rates and to determine how many cases in relation to gender-based violence against ethnic minority women actually progress to court.

Fawcett has previously explored the issues faced by women negotiating the court process.¹¹³ However, it is important to highlight issues which are likely to disproportionately affect ethnic minority women and to acknowledge current initiatives within the justice system which may be having less beneficial impact on women from non-White backgrounds.

The interpretation support available in the court room and throughout the justice process is critical for many ethnic minority women. These women need to be supplied with appropriate support and should not be disadvantaged in court if communicating through an interpreter. Evidence provided to Fawcett suggests that in trafficking cases the Defence will often use the fact that a woman is communicating through an interpreter to advance the defendant's case.¹¹⁴ At the other extreme, proper interpretation support is often not provided. As a recorder commented to Fawcett's Commission; "*I find it quite shocking that even the basic preparation such as checking that a witness is able to give evidence without an interpreter does not take place.*"¹¹⁵

¹¹¹ Metropolitan Police Service, *The attrition of rape cases in London: A Review*, January 2007.

¹¹² CPS, *Violence Against Women Crime Report 2007-2008*, December 2008.

¹¹³ For example see the reports of Fawcett's Commission on Women and the Criminal Justice System: *Report of the Commission on Women and the Criminal Justice System* 2004, pp.11-17 and pp.29-33; *Justice and Equality: the Second Annual Review of the Commission on Women and*

the Criminal Justice System, March 2006, pp.3-5 and p.10; *Women and Justice: third annual review of the Commission on women and the criminal justice system*, July 2007, pp.7-9 and p.16; Engendering Justice op cit. pp.45-65.

¹¹⁴ *Engendering Justice*, May 2009 op cit., p. 59.

¹¹⁵ Questionnaire Response, Recorder, evidence submitted to the Commission on Women and the Criminal Justice System, February 2009.

Ethnic minority women are also likely to be disproportionately affected by cuts to legal aid over the last few years. Forced marriage, domestic violence cases where there are immigration issues and trafficking are often complex. In most cases, the time limited legal aid will be completely inadequate, particularly where the victim requires a translator to communicate with her solicitor.

Barristers, in order to present a convincing narrative to the court, need to understand the realities of ethnic minority women's experiences of violence. Training in the complexities of cases of domestic and sexual violence, trafficking, forced marriage and honour-based violence should be a prerequisite before barristers can represent the Crown in these cases. This training should also address the myths and stereotypes surrounding gender-based violence, with particular reference to the intersection between race and gender.

Special measures, which provide protection for witnesses and victims during the court process, such as giving evidence by live television links; screening the witness off from the accused; and allowing evidence in chief to be pre-recorded, are important developments. While these measures are not currently consistently available or reliably supplied, they have the potential to greatly increase the confidence of witnesses to give evidence. These measures need to be more widely publicised within ethnic minority communities and utilised for vulnerable women.

There have been some important developments over the last few years designed to improve the responsiveness of the justice system to women. However, more data is needed to establish whether these initiatives are responsive to the needs of ethnic minority women. For example, there has been a notable improvement in the conviction rate for domestic violence, partly due to the growing network of specialist domestic violence courts (SDVCs) which allow a partnership approach to domestic violence. However, there is evidence that this approach may not be working as well for ethnic minorities. For example, an evaluation found that there was a lower success rate in SDVCs with a high proportion of defendants from an ethnic minority background.¹¹⁶

¹¹⁶ Her Majesty's Court Service, Home Office, Criminal Justice Service, Specialist Domestic Violence Courts Review 2007-08, *Justice with Safety*, <http://www.crimereduction.homeoffice.gov.uk/dv/dv018a.pdf>, March 2008, p.4.

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Resisting violence: ethnic minority women's experiences as victims and survivors

Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs) have been introduced to provide support for victims negotiating the criminal justice system. There are currently 43 ISVA posts and over 700 IDVA posts in England and Wales.¹¹⁷ IDVA and ISVA posts have the potential to provide much needed support for victims. However, given the current under-resourcing, lack of a consistent approach between regions and existing marginalisation of ethnic minority women within policy development on response-interventions, it is unlikely that these roles are equipped to respond to the needs of ethnic minority women.¹¹⁸ The scheme also lacks the support of specialist services to meet the long term needs of ethnic minority women. For example, although more than 30 percent of IDVA clients are ethnic minority women, support services for them make up only 18 percent of total domestic violence provision.¹¹⁹

Multi-Agency Risk Assessment Conferences (MARACs) have become the cornerstone of the Government's approach to high-risk victims of domestic violence and there are now over 225 in England and Wales. In 2008, approximately 29,000 cases were brought to MARACs.¹²⁰ However, it is unclear how responsive this initiative is to the intersection between race and gender in the context of domestic violence. In fact, evidence from research conducted by the NSPCC in 2008 found that there is a lack of representation from South Asian groups on domestic violence forums and a lack of cultural awareness among some partners in MARACs.¹²¹

It is also important to recognise that the diversion of resources within the criminal justice sector to MARACs, specialist courts and independent advisors (such as ISVAs and IDVAs) has led to a reduction in the resourcing of community-based approaches to prevention and service provision which are on the one hand likely to be more responsive to the specific needs of ethnic minority women and on the other are more likely to be the avenues by which ethnic minority women will engage with the justice system.

¹¹⁷ HM Government, *Together We Can End Violence Against Women and Girls: a Strategy*, <http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/end-violence-against-women?view=Binary>, November 2009, pp. 17 & 48.

¹¹⁸ *Engendering Justice*, op cit., p.55.

¹¹⁹ Mouji, A. *A Right to Exist – a paper looking at the eradication of specialist services to BAMER women and*

children fleeing from violence, Imkaan, London, 2008, p.14.

¹²⁰ *Together We Can End Violence against Women and Girls: A Strategy*, 2009, op cit., p.17.

¹²¹ Shayma Izzidien, *I can't tell people what is happening at home: Domestic abuse within South Asian communities: the specific needs of women, children and young people*, NSPCC, June 2008, p.7.

Ethnic Minority Women's Experiences of Violence

It is only within the last decade that we have seen a growing awareness by the Government and criminal justice agencies of violence against ethnic minority women, particularly in relation to domestic violence and harmful practices such as FGM, forced marriage and so-called 'honour-based violence' (HBV). While this increased state intervention has led to a growing awareness of the experiences of ethnic minority women, this focus has tended to be limited in scope in terms of the women it addresses, the types of violence which are focused upon and the lack of integration of the needs of ethnic minority women into wider plans and strategies in relation to violence against women.

Harmful Practices – Resisting Racialised Categorizing of Violence

Increasingly there has been an acknowledgement by policymakers and criminal justice agencies that violence against women includes what has been called 'harmful traditional practices' (HTPs).¹²² HTPs were the focus of a Select Committee in 2008¹²³ and are also highlighted in a number of action plans such as the National Domestic Violence Delivery Plan the Sexual Violence and Abuse Plan, and within the CPS Violence against Women Strategy. The Government's violence against women (VAW) strategy launched in November 2009 also notes that some forms of violence, such as female genital mutilation, forced marriage and HBV, are more likely to be experienced by ethnic minority women and refugee women.¹²⁴

This recognition of HTPs has led to some important developments over the last few years. The UK's joint Foreign & Commonwealth and Home Office Forced Marriage Unit was launched in January 2005 and dealt with more than 1,600 calls to its helpline in 2008.¹²⁵ *The Forced Marriage (Civil Protection) Act 2007* also came into force on 25 November 2008 and provides injunctive relief and damages for victims. In 2008, 86 women were placed under forced marriage prevention orders, which are designed to protect women in their particular circumstances, for example through confiscating

¹²² This terminology itself suggests that the gender-based violence ethnic minority women experience is substantially different to that which White women experience, in that it is about 'tradition' while White women's experiences are not.

¹²³The Home Affairs Select Committee on Domestic Violence, Forced Marriage and Honour-related violence

¹²⁴ *Together We Can End Violence Against Women and Girls*, November 2009, op cit.

¹²⁵ *Information for forced marriage victims*, <http://www.fco.gov.uk/en/global-issues/human-rights/forced-marriage-unit/information-for-victims>, 2009.

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Resisting violence: ethnic minority women's experiences as victims and survivors

a woman's passport to stop her being taken abroad, against her wishes, for the purposes of forced marriage.¹²⁶ However, this solution also has the potential to be problematic as it involves limiting a woman's liberty of movement and its use will need to be carefully monitored.

'HBV' is also receiving increased attention. For example, an HBV hotline has been set up by Cambridgeshire police to provide victims with access to trained staff that have an understanding of the issues. The CPS also carried out a pilot in four CPS areas over nine months in 2007-08 in which 35 cases of HBV were identified.¹²⁷ A number of key recommendations for future work were made as a result of this pilot including the need for specialist prosecutors and leads, mandatory training for selected prosecutors, sharing of best practice, and multi-agency work especially with the police.¹²⁸

The Female Genital Mutilation Act 2003 came into force in March 2004, increasing the penalty of committing FGM to a 14 year sentence. This new legislation introduced 'extraterritoriality', making it illegal for parents to remove their children from the UK to undergo FGM procedures.¹²⁹ In 2008, the Metropolitan Police's Project Azure offered £20,000 as reward for information which could lead to the prosecution of practitioners of FGM.¹³⁰ Guidelines on FGM are also included in the Government's 'Working together under the Children Act 1989', targeted at the probation services, police and health authorities.¹³¹ However, while France secured their first FGM conviction in 1991,¹³² the UK's legislation has not been implemented effectively and no prosecutions have been made, even after the introduction of a reward structure. The All Party Parliamentary Group on Population, Development and Reproductive Health have called for funds to be made available to collect reliable data and undertaken research on the incidence of

¹²⁶ <http://www.justice.gov.uk/news/newsrelease251109a.htm>

¹²⁷ CPS, *CPS Pilot on forced marriage and so-called 'honour' crime – findings*, December 2008.

¹²⁸ CPS, *Recommendations on future work on forced marriage and so-called 'honour' crime*, December 2008.

¹²⁹ NSPCC, *Responding to Black and Minority Ethnic Children and Young People Affected by Domestic Violence – Conference Report*, http://www.nspcc.org.uk/Inform/newsandevents/ConferenceReports/Responding_

<wdf48709.pdf>, February 2007.

¹³⁰ Womensgrid, *Drive Against Female Circumcision in London Steps Up with a £20,000 Reward*, <http://womensgrid.freecharity.org.uk/?p=493>, 20 August 2008.

¹³¹ Parliamentary Campaign Stop Violence Against Women, *Legislation and other national provisions*, <http://www.ipu.org/wmn-e/fgm-prov-t.htm>.

¹³² BBC, *Europe Woman Jailed For 48 Circumcisions*, <http://news.bbc.co.uk/1/hi/world/europe/281026.stm>, 17 February 1999.

FGM in the UK.¹³³

These developments and the acknowledgement that violence against women includes these crimes is a welcome step forward, as too often policy focus on violence against women has been limited to the issue of domestic violence. However, this increased focus on so-called HTPs has been a 'help as well as a hindrance' for many ethnic minority women as it has allowed criminal justice agencies and the Government to attribute responsibility for violence against ethnic minority women to cultural attitudes. Consequently, there has been a twin failure to address these issues within the wider context of gender-based violence on the one hand and to address other forms of violence against ethnic minority women that cannot be as easily pigeon-holed as 'stemming from culture'. For example, there has been little attention to the needs of ethnic minority women in the area of sexual violence and few specialist sexual violence services exist.

This approach was evident in the Government's recent groundbreaking strategy on VAW. While there is reference to ethnic minority women's disproportionate experience of HTP and a reference to services for ethnic minority women, their needs are not mentioned again in the document. This suggests that the needs of ethnic minority women are still viewed in the context of a separate dialogue on HTP rather than within wider analysis of gender-based violence and power dynamics.

Trafficking

In December 2008, the Government ratified the Council of Europe Convention Against Human Trafficking. This is a significant step, with the Convention setting minimum standards for protecting and supporting trafficking victims. As of December 2008, there had been 92 convictions for trafficking for the purpose of sexual exploitation under the Sexual Offences Act and four convictions for trafficking for labour exploitation.¹³⁴ The CPS has begun work with the UK Human Trafficking Centre and the Home Office to analyse data on trafficking crimes and to monitor prosecution

¹³³ Parliamentary Campaign Stop Violence Against Women, *Legislation and other national provisions*, <http://www.ipu.org/wmn-e/fgm-prov-t.htm>.

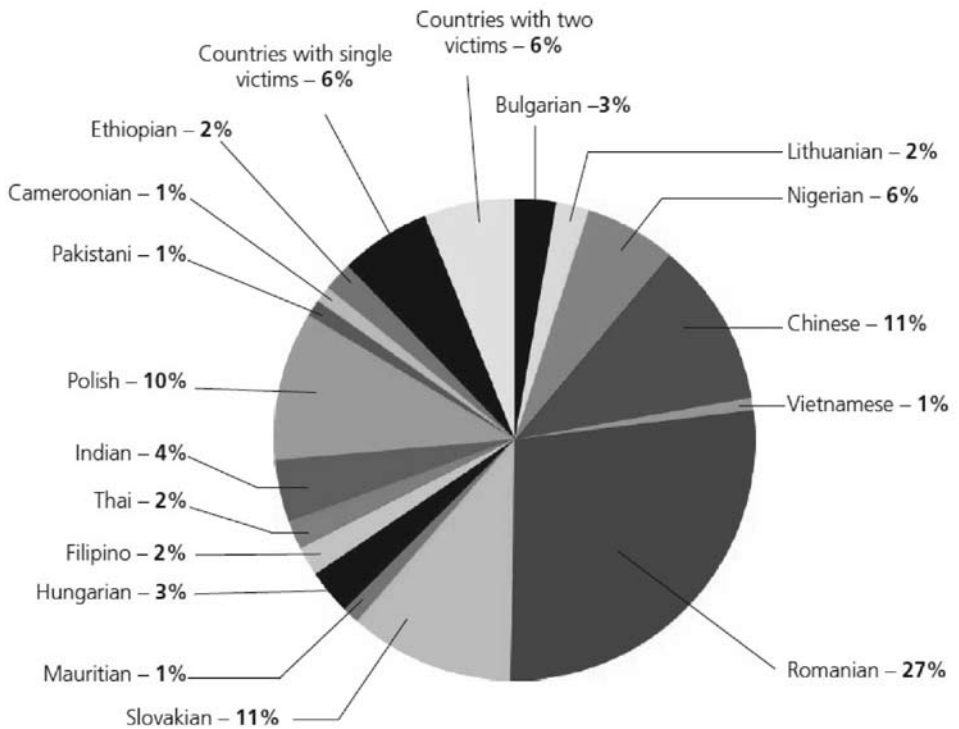
¹³⁴ Home Office Press Release, *Government ratifies European convention against human trafficking*, <http://press.homeoffice.gov.uk/press-releases/government-ratifies-convention>, 17 December 2008.

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outcomes. Significantly, this is producing data on the gender and ethnicity of victims (see figure 3). Of the 227 victims, 140 were female and 87 were male.

Figure 3 – Nationality of Victims



Source: Crown Prosecution Service, Violence against Women crime report 2008-2009, December 2009

An important breakthrough – No Recourse to Public Funds

Women fleeing domestic violence with an insecure immigration status and therefore no recourse to public funds cannot access any kind of emergency or social housing. This was an issue singled out by the Convention on the Elimination of Discrimination Against Women Committee in 2008 as an area upon which the UK is failing to live up to its legal obligations under CEDAW. Imkaan research reveals that during a period of two years (2005-07), out of 429 referrals of women with no recourse to public funds for housing, 91 percent of women were not housed.¹³⁵

Extensive campaigning by women's groups, led by Southall Black Sisters, has successfully brought this issue onto the public policy agenda and in November 2009 the Government announced a pilot scheme for women experiencing domestic violence with no recourse to public funds. The scheme will provide funding for a woman to remain in a refuge for 40 days pending an application to remain in the UK under the domestic violence and immigration concession. The scheme will run for three months after which time it will be reviewed.

This pilot is a step in the right direction. However, the scheme will still place the burden on under-funded specialist front-line ethnic minority women's organisations and refuges. Additionally, the scheme will not apply to women on student visas, temporary work permits, trafficked women, asylum seekers or women who have overstayed their visa.¹³⁶ A more permanent solution is needed to ensure that there are not discriminatory responses to women suffering violence and to ensure Britain meets its legal obligations.

¹³⁵ Sumanta Roy, *No Recourse – No Duty to care?* Imkaan, January 2008, p.6.

¹³⁶ See *Women's rights groups say government provision not enough*, press release, http://www.wrc.org.uk/news/wrc_news_releases/no_recourse_release_nov_09.aspx, 12 November 2009.

Chapter 4 Continued

Resisting violence: ethnic minority women's experiences as victims and survivors

Beneath the surface – women's experiences of gang violence

Acknowledging ethnic minority women's experience of violence is also about recognising the female face of forms of violence that have been identified as disproportionately affecting ethnic minority men. For example, research revealed in London, Manchester and Birmingham there have been a disproportionate number of black men and boys who have been both the victims and perpetrators of gang-related violence,¹³⁷ but there has been minimal examination of what this means for ethnic minority women and female relatives in particular. Race on the Agenda (ROTA)'s Female Voice in Violence Project is an important initiative bringing to life the reality of ethnic minority women's experiences within gangs (see box).¹³⁸

Female gang members are the victims of gender-specific violence, sexual abuse, and intimidation within their own and rival gangs. They are 'passed' among gang members,¹³⁹ forced to produce explicit material, and made to perform sexual acts on numerous boys to an audience of gang members.¹⁴⁰ Female gang members are frequently victims of rape and gang rape as a means of revenge or an exercise of power,¹⁴¹ and female gang members have admitted to being involved in organising gang rapes, fearing if they do not they will be the next victims.¹⁴²

Gang membership leaves girls significantly more exposed to physical violence: 30 percent of gun crime victims are young females, compared to 2-5 percent of these crimes having female suspects.¹⁴³ Interviews with American girl gang members revealed that 48 percent had been attacked, 44 percent sexually assaulted, and 41 percent had been stabbed.¹⁴⁴ Gang initiation often results in the merging of sexual and violent offences, with female 'hopefuls' being forced to fight or have sex with multiple gang members.¹⁴⁵ Sexual violence is also increasingly being used within the UK as an alternative weapon against rivals in the wake of institutional crackdowns on the carrying of knives and other weapons. Indeed, ROTA's work is revealing that a failure by

¹³⁷ Paul Dawson, *Monitoring Data from the Tackling Gangs Action Programme*, May 2008

¹³⁸ ROTA, *Female Voice in Violence Report*, forthcoming 2010.

¹³⁹ John Pitts, "Violent Youth Gangs in the UK", Safer Society, Spring 2007, p.16.

¹⁴⁰ Christian E. Molitor, "Teenage Girls Buying into Gang Violence: a summary", *Social work*, August 1996, Vol 5/96.

¹⁴¹ "Violent Youth Gangs in the UK", op cit. pp.14-17.

¹⁴² Womensgrid, *Gang Rape: is it a race issue*, <http://womensgrid.freecharity.org.uk/?p=2851>, June 2009.

¹⁴³ "Violent Youth Gangs in the UK", op cit, pp.14-17.

¹⁴⁴ Jody Miller & Scott Decker, "Young Women and Gang Violence: gender, street offending, and violent victimisation in gangs", *Justice quarterly*, March 2001, Vol 18/1, p.130.

¹⁴⁵ Christian E. Molitor, "Teenage Girls Buying into Gang Violence: a summary", *Social work*, August 1996, Vol 5/96.

Government to incorporate a gender analysis into its policy development on gangs has directly resulted in an increased risk of violence for girls and women.

In a workshop conducted by Building Bridges, ROTA's youth-led policy and research programme on gang/youth violence, female participants spoke of the 'limited' involvement of the police in tackling gang-related rape crimes and the minimal support available for victims.¹⁴⁶ This is particularly worrying as gang membership is often sought by those who have suffered physical and sexual abuse at home,¹⁴⁷ or whose capacities are affected by substance misuse.¹⁴⁸ As victims are very reluctant to report crimes due to criminal connections and/or fear of reprisal, police failure to take such crimes seriously will result in even fewer victims coming forward.¹⁴⁹ At present there are no national statistics for gang rape but in 2008 reports of 85 multiple perpetrator rapes were recorded by the Metropolitan police.¹⁵⁰

Female Voice in Violence Project – ROTA

The Female Violence Against Women Project aims to assess the effect of gang and serious youth violence on girls and women. To achieve this, the two branches of the project, the 'partnership' and the 'research programme', are working to address the national and devolved policy landscape and to assess the capacity of the third sector to deliver services to women and girls affected by youth violence. Through action research and engagement with women's groups, the partnership represents the views of the ethnic minority women's sector, and the women's sector more generally, in VAW and serious youth crime policy. A network of expert exchange and support has also been established by the links made between gangs, women and ethnic minority organisations, providing a model of cross-equality work.

ROTA will shortly launch its partnership and research programme reports, which will provide much needed evidence and analysis of the impact of serious youth violence, gangs, and serious group offending, on women and girls.

www.rota.org.uk/pages/FVV.aspx

¹⁴⁶ Carlene Firmin, Building Bridges Project, *Post Conference Report and Project Update*, ROTA, November 2008.

¹⁴⁷ "Young Women and Gang Violence", op cit. pp. 115-140.

¹⁴⁸ Building Bridges Team, *Post Conference Report and Project Update*, November 2008.

¹⁴⁹ Ibid.

¹⁵⁰ Notably, the collection of data on multiple perpetrator rape does not track whether an individual is associated with a gang.

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Continued
Resisting violence: ethnic
minority women's experiences
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Source: Map of Gaps 2: The Postcode Lottery of Violence against Women Support Services in Britain, End Violence Against Women and Equality and Human Rights Commission, January 2009.

Support Services – Taking stock of the gaps

Nine out of ten local authorities have no specialist ethnic minority service for women who have experienced violence.¹⁵¹

The response from statutory agencies and the provision of services and support can be poor for all women experiencing violence but there is a particular lack of understanding of the needs of ethnic minority women. Meanwhile, the cost to society of violence against ethnic minority women is around £1.5 billion.¹⁵²

Research has clearly demonstrated the necessity and effectiveness of organisations led by and for ethnic minority women.¹⁵³ These organisations reach the most vulnerable and excluded women, many of whom do not have access to statutory services. Research has also demonstrated the importance of specialist refuge provision, particularly for women where English is not their first language.¹⁵⁴ However, provision of specialist services for ethnic minority women experiencing violence is lacking and where such services do exist they are concentrated in metropolitan areas. 95 percent of specialised ethnic minority provision is located in England with 47 percent concentrated in London.¹⁵⁵

Despite this shortage in services, ethnic minority women's front line services are constantly under resourced, and there is a continual reduction in the resources available to provide support for ethnic minority women experiencing violence. London-based ethnic minority women's organisations have experienced long term instability with 40 percent having no full-time staff and 36 percent staffed only by volunteers. Demand for services, meanwhile, has continued to increase.¹⁵⁶ In September 2008,

¹⁵¹ M Coy, L Kelly & J Foord, *Map of Gaps 2: The Postcode Lottery of Violence Against Women support services in Britain*, End Violence Against Women and Equality and Human Rights Commission, p.25.

¹⁵² *Hard Knock Life, Violence against women, a Guide for Donors and Funders*, New Philanthropy Capital, 2008.

¹⁵³ See for example, Marie Sheridan, *Funding...into the Abyss? Fundraising Experiences of BME Women's Voluntary and Community Organisations*, Women's Resource Centre, March 2004.

¹⁵⁴ Rai, D. & Thiara, R. *Redefining Spaces: The Needs of Black Women and Children Using Refuge Services in England: their Feelings, Needs and Priority Areas for Development in Refuges*, Women's Aid Federation of England, 1997.

¹⁵⁵ *Map of Gaps 2*, op cit. p.26.

¹⁵⁶ Women's Resource Centre, *Report for London Councils: Funding of London Women's Refugees*, London, 2007. ¹⁵⁶ Imkaan, *A Matter of Life and Death: the loss of specialist services for BAMER women and children experiencing violence*, Imkaan, June 2008.

Chapter 4 Continued

Resisting violence: ethnic minority women's experiences as victims and survivors

there were only 50 percent of the specialist independent ethnic minority women's-led organisations across the UK that existed five years ago. For example in London there were only 6 independent ethnic minority women's-led services in 2008; 18 months prior this figure was 14.¹⁵⁷

A focus on 'integration' by the Department for Communities and Local Government combined with a security-led policy focus on Muslims in the UK has also led to resources being diverted away from 'single group funding' such as ethnic minority women's groups and there is evidence of pressure on ethnic minority women's refuges to merge with generic refuges.¹⁵⁸ Research by Imkaan has highlighted "a lack of cultural competency" among officials which can lead to specialist services for ethnic minority women being under-valued and measured against inappropriate performance indicators.¹⁵⁹

Most specialist services for women focus on domestic violence and there has been little research or service provision in the area of sexual violence for ethnic minority women. There is no evidence to support the idea that ethnic minority women experience a lower incidence of sexual violence and in fact, may be subject to particular risks such as the use of sexual violence within gang culture. Research by Imkaan also highlights a gap in the services to meet the needs of ethnic minority women with substance misuse needs, mental health issues and risk of self-harm.¹⁶⁰ Gaps have also been noted in the provision of services for FGM. The majority of services available are health clinics in the statutory sector and located in London leaving significant gaps in community-based approaches and no specialised services in five of the eight English Government regions.¹⁶¹

¹⁵⁷ Imkaan, *A Matter of Life and Death: the loss of specialist services for BAMER women and children experiencing violence*, Imkaan, June 2008.

¹⁵⁸ See box interpreting the Race Equality Duty, Chapter Six.

¹⁵⁹ Mouji, A. *A Right to Exist – a paper looking at the eradication of specialist services to BAMER women and*

children fleeing from violence, Imkaan, London, 2008.

¹⁶⁰ Anitha. S. *DV Inquiry: Submission to Home Affairs Committee*, Imkaan, London, 2007.

¹⁶¹ *Map of Gaps 2*, op cit. p.26.

There is a need for an in-depth needs assessment of vulnerable ethnic minority women experiencing violence – to highlight the gaps, identify the interventions which are most effective for ethnic minority women and to provide guidance to local authorities and commissioners as to the value of ethnic minority-led women-only service provision.¹⁶² Consultation with ethnic minority women and long established ethnic minority services to establish service needs is crucial to create support for ethnic minority women which is consistent with their needs and preferred pathways to seeking help and engaging with the justice sector.

ELBWO – East London Black Women’s Organisation

ELBWO was founded in 1979 to deal with issues which affect black families in the Borough of Newham such as isolation, poor housing and access to education. As a multi-purpose resource centre, they deliver advice, outreach and a drop-in service for those affected by domestic violence or rape and sexual abuse and work in eight London boroughs to improve access to services and Black women’s knowledge of their rights. Other services include free legal advice, a women’s support group, counseling and domestic violence awareness talks to schools and community groups. ELBWO also provides educational and childcare support for community children aged 4-16.

www.elbwo.org.uk/

¹⁶² See Imkaan, *A Matter of Life and Death: the loss of specialist services for BAMER women and children experiencing violence*, June 2008 for a detailed discussion.

Chapter 4 Continued

Resisting violence: ethnic minority women's experiences as victims and survivors

Black Women's Rape Action Project

Black Women's Rape Action Project (BWRAP) focuses on winning justice for ethnic minority women, including immigrant women, who have survived rape, racist attacks and other violence. Practical self-help support services include counselling to women and girls who have been raped or sexually assaulted in their country of origin, face sexual harassment at work or in other areas, and/or have experienced domestic violence, racist attacks or rape and sexual abuse by people in authority, including in institutions, by police or military forces.

They have a particularly strong track record of helping rape victims win compensation and of working with survivors of rape seeking asylum in the UK by accepting commissions from immigration solicitors to interview rape survivors seeking asylum and produce expert reports.

<http://www.womenagainstrape.net>

Asian Women's Resource Centre

The Asian Women's Resource Centre is a specialist women's organisation set up in 1980. It provides support to ethnic minority and refugee women and children in London. The centre works on issues around violence against women, including rape, forced marriage and honour killings, and provides free, confidential and professional advice and information, counselling, advocacy, outreach and support groups. This includes emergency support, prioritising women who are distressed or in need of immediate referral to a refuge. Although AWRC operates a specialist service offering six South Asian languages, the service is open to women from any community. In addition, service delivery is complimented by a campaigns presence that facilitates focus groups and involves users in government policy consultations.

www.asianwomencentre.org.uk

Southall Black Sisters

Southall Black Sisters was established in 1976 to meet the needs of Asian and African-Caribbean women experiencing violence. Their resource centre in West London provides individual counselling and advocacy, information and self-help support services in several community languages. SBS is also prominent for their campaigning against domestic and gender violence and for the provision of adequate support services for all women. They have also carried out high profile campaigns on behalf of individual women who have experience injustice and against the 'No Recourse to Public Funds' rule. Recently SBS has taken further steps to address 'no recourse' by establishing a small fund to allow refuges to support women experiencing violence who would otherwise be unable to access funds.

For further information on SBS's case against Ealing Council regarding the race equality duty, please see Chapter 5.

www.southallblacksisters.org.uk

Chapter 5:

How equality tools can help

“Issues of race and gender need to progress at the same speed, otherwise black females will always be disadvantaged as we fall within two groups.” 163

In this report, we have examined the experiences of ethnic minority women throughout the criminal justice system. We have highlighted the double discrimination these women often face and the realities of a justice system which frequently overlooks the needs of ethnic minority women in policy development and practice.

Significantly, equality tools exist which should be leading to strong policy development and informed practice. This chapter will examine the key equality tools including the UK's international obligations under CEDAW; the equality duties on public bodies; and the opportunities presented by the Equality Bill currently progressing through parliament. These tools have the potential to transform the criminal justice system for ethnic minority women – if they are understood, utilised in policy development, and then implemented in practice.

Understanding Equality

At the outset it is important to note that the new equality tools outlined in this chapter will have little or no effect unless there is an understanding as to what equality means. Traditionally, the legislative framework in the UK has been based on a *formal equality* model which assumes that all people should be treated alike. However, this approach to equality can actually entrench disadvantage as some inequalities are so persistent, durable and institutionalised (in both formal and informal structures and processes) that to treat people in the same way may simply be to reproduce disadvantage.

Substantive equality, conversely, is directed at achieving substantively equal outcomes. This requires identifying and addressing the roots of inequality, and recognising that 'special measures' are likely to be necessary to achieve equality.

¹⁶³ M Gittens, *What About Us*, op cit. p.40.

A substantive equality approach recognises that women are not a homogenous group. Women will have differentiated needs according to their experiences, as well as the intersection between their gender and other identities. The equality duties, outlined below, impose a clear legislative obligation upon public authorities to adopt a substantive equality (or outcome based) approach to addressing gender inequality.

Formal Equality assumes that all people should be treated alike. Such equality can in fact entrench gender disadvantage.

Substantive Equality is directed at achieving equal outcomes. It requires that the roots of inequality are identified and addressed, and that 'special measures' may be needed to achieve equality.

The Equality Duties

The introduction of the equality duties on public bodies saw an important shift from the emphasis on the individual to seek redress once they had experienced discrimination to a more positive proactive equalities framework where the burden rests with all organisations providing a public service to address discrimination and promote equality. The Race Equality Duty (RED) came into force in 2001 following the inquiry into the murder of Stephen Lawrence. This duty requires that public bodies in the United Kingdom take steps to eliminate unlawful racial discrimination; promote equality of opportunity; and promote good relations between different racial groups. In addition, listed public bodies must comply with specific duties, such as publishing a race equality scheme every three years.

The Gender Equality Duty (GED) came into force in April 2007 and requires that all public bodies in England, Wales and Scotland take steps to promote equality of opportunity between women and men and eliminate unlawful discrimination and harassment in all of its functions. Many public bodies must also comply with specific duties which include carrying out gender impact assessments on all current and new policies; setting gender equality objectives published in Gender Equality Schemes (which must be revised every three years); and reporting on progress against the schemes annually.¹⁶⁴

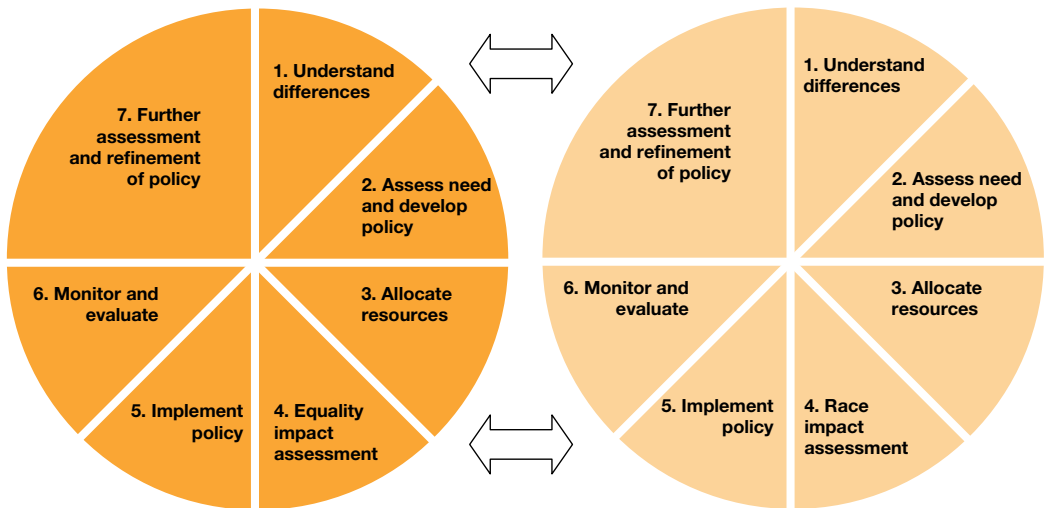
¹⁶⁴ See H, Dustin, *Understanding your Duty: Report on the Gender Equality Duty and Criminal Justice System*, Fawcett Society, July 2006, for a further discussion of the GED and the criminal justice system.

Chapter 5 Continued

How equality tools can help

The GED and the RED place an obligation on public authorities such as the Police, the CPS, Probation and local authorities to ensure that the needs of women from minority communities are identified, understood and used to inform the development of policies and procedures. This should include the disaggregation of statistics by race and gender; the provision of accessible services to specifically meet the needs of ethnic minority women; and training on the needs of ethnic minority women. These duties, if implemented in an integrated way, have the potential to ensure that the needs of ethnic minority women are recognised and taken into account.

Figure 4 – GED and RED and the Policymaking Cycle



However, to date, the results have been disappointing. There has been a tendency for information collection to focus on collecting data about women as an undifferentiated group in the criminal justice system. Further, a misunderstanding of equality as requiring the same treatment for all, has led to programmes and services which have been designed to meet men's needs being applied to women. Funds have also been diverted from specialist services for ethnic minority women (see box). Too often, the practical application of the duty has been reduced to ticking boxes in isolation, without a concrete understanding of the needs of men and women and the need to mainstream gender within core every day business.

There are some examples of good practice. For example, the Gender Specific Standards for Women Prisoners (Prison Service Order 4800)¹⁶⁵ specifically provides guidance in relation to the needs of ethnic minority women. In developing these standards, the Women and Young Person's team (within the National Offender Management Service) visited all women's prisons and within each prison held two prisoner focus groups: one with a random group of women and one with a group of women from ethnic minority backgrounds. This approach helpfully resulted in a specific focus on the distinct needs of ethnic minority women in policy development.

The Equality Bill proposes that the existing public sector duties will be replaced by a single unified duty that will cover all discrimination strands. This proposed change has the potential to result in public bodies paying more attention to the intersection of inequalities (such as race and gender) in the development of policies and procedures. However, given the current problems with the implementation of the GED (including a lack of focused analysis) this appears unlikely to be realised. Further, the current proposals for the specific duties are less prescriptive and more flexible than the current duties, and there is therefore a risk that a unified approach may result in a lower grade of gender equality as processes are levelled down rather than up to existing standards. There is an additional risk that gender will be lost among other inequalities as previously excluded discrimination strands begin to be championed.

¹⁶⁵Women Prisoners, Prison Service Order 4800, 28 April 2008.

Chapter 5 Continued

How equality tools can help

Interpreting the race equality duty:

Southall Black Sisters (Kaur and Shah) v Ealing Council

In July 2007 two users of Southall Black Sisters took Ealing Council to court over their decision to change the way they funded support services for victims of domestic violence. Their complaint was against the Council's decision to move funding for domestic violence services away from Southall Black Sisters, which provides a service tailored specifically to the needs of ethnic minority women, and use the money to provide an 'all-women' service. Southall Black Sisters argued that the Council had misinterpreted the race equality duty, ignored their own guidelines and made false assumptions about the prevalence of domestic violence among ethnic minority communities.

Ealing Council withdrew from the case two days into the proceedings, agreeing that its decision on the grant's criteria should be quashed. The judgement concluded that Race Equality Impact Assessments must be undertaken before a policy is decided upon and not as a rearguard action to justify decisions that have already been made. Impact assessments should also look at those losing a service, not only the new service proposed. The judge ruled that the Council had misinterpreted the Race Equality Duty, and that provision of specific services for minority groups was essential, not unlawful: *"There is no dichotomy between the promotion of equality and cohesion and the provision of specialist services to an ethnic minority. Barriers cannot be broken down unless the victims themselves recognise that the source of help is coming from the same community and background as they do."*

**The full judgement is available at
www.bailii.org/ew/cases/EWHC/Admin/2008/2062.html**

The Forthcoming Equality Bill

The Equality Bill, which is currently progressing through Parliament contains a number of provisions which have the potential to impact both on the under-representation of ethnic minority women in the justice sector and the rights of ethnic minority women to seek redress for discriminatory treatment involving a unique combination of race and gender.

(a) Positive Action

The Bill contains two provisions in relation to positive action which will allow employers the flexibility to address imbalances in their workforce. The first provision builds on existing positive action rules which centre on training and encouragement to take up certain kinds of work. The Equality and Human Rights Commission has recommended the greater use of positive action to encourage more ethnic minorities to join the police force.¹⁶⁶

The second positive action measure in relation to recruitment and promotion has provoked much controversy and it appears there is little understanding of the meaning of the provision. In reality, this provision will allow employers to voluntarily address under-representation of certain groups in the workplace. This means that when choosing between two equally qualified candidates for recruitment or promotion, an employer could take into account if a particular group such as ethnic minority women were under-represented in the workplace.

It remains to be seen how this provision will be applied in practice, as employers may find it difficult to decide whether a particular group is under-represented or whether two candidates are equally qualified. However, if the provision is clearly defined and straightforward guidance provided to employers, this measure could be an important step towards addressing the under-representation of ethnic minority women within the criminal justice sector.

¹⁶⁶ J. Bennetto, *Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report*, Equality and Human Rights Commission, 2009, p.38.

Chapter 5 Continued

How equality tools can help

(b) Dual Discrimination

The government has also proposed a 'dual discrimination' clause in the Equality Bill to protect people who experience direct discrimination because of a combination of two protected characteristics (age, disability, gender, gender reassignment, race, religion or belief, or sexual orientation).

Currently, people may only bring separate discrimination claims relating to one protected characteristic which means that the current framework does not address the experiences of ethnic minority women who can face discrimination as a result of the combination of race and sex. For example, a criminal justice agency may have a practice of not promoting Pakistani women. If the agency can demonstrate there is no gender discrimination in promotion practices, in that women are promoted on equal levels with men, and that similarly there is no race discrimination, with Pakistani men holding senior positions, a Pakistani woman would not be able to prove less favourable treatment on the grounds of race or sex. Under current laws, this would mean that she would not be able to prove any discrimination existed, even though in reality, it is the specific combination of both of these characteristics (race and sex discrimination) which is the grounds for the less favourable treatment.

The new proposal would mean that a Black female member of staff who is discriminated against because her manager has a particular stereotyped attitude towards Black women could bring a single claim for combined race and sex discrimination. This new law should also prompt employers to proactively consider and prevent multiple discrimination within the workplace.

International Obligations

CEDAW is a legally binding international treaty that is often described as an international bill of rights for women. The UK became a signatory to CEDAW in 1981 and ratified the Convention in April 1986. In addition, the United Nations' International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is the main international document to address the issues of racism and racial discrimination. The United Kingdom ratified CERD on 7 March 1969.

Both of these Conventions impose international obligations on the UK to take appropriate measures to ensure that ethnic minority women enjoy all their human rights and fundamental freedoms and can be drawn upon to hold the Government accountable.

Significantly, the Committee on the Elimination of Discrimination against women ('The CEDAW Committee'), in its examination of the United Kingdom in July 2008, noted with concern a number of areas which are particularly pertinent for women from ethnic minority backgrounds:

- the varying levels of public understanding of substantive equality, resulting in misinterpretation of the gender duty;
- the large number of women in prison for short sentences for non-violent crime;
- the need to ensure the full implementation of legislation to prohibit female genital mutilation;
- the continuing practice of forced marriage and lack of targeted prevention strategies;
- the need for protection and rehabilitation of victims of trafficking; and
- the impact of the state's laws and policies on women migrants, refugees and asylum seekers.

In addition, the CEDAW Committee specifically urged the UK:

*"...to intensify its efforts to prevent and eliminate discrimination against ethnic and minority women. It encourages the State party to be proactive in its measures and to raise women's awareness of the availability of social services and legal remedies."*¹⁶⁷

¹⁶⁷ Committee on the Elimination of Discrimination against Women, *Concluding Observations: United Kingdom of Britain and Northern Ireland*, Forty-first session, CEDAW/C/GBR/CO/6, 18 July 2008, Paragraph 294.

Chapter 5 Continued

How equality tools can help

Conclusion

Equality tools have the potential to lead to strong policy development and informed practice in the criminal justice sector. They also offer a mechanism for the Government to be held to account to deliver rights and fundamental freedoms for ethnic minority women and for the justice sector to address the under-representation of women from ethnic minority backgrounds.

However, there can be no real change until there is a shift in mindset towards a realisation that equality does not require that ethnic minority women be treated the same as men or the same as women from different ethnic backgrounds but rather that each individual should be treated appropriately according to their distinct needs – whether accused or convicted of crime, female victims of crime or ethnic minority women working in the criminal justice system.

Chapter 6

Recommendations

This report has examined the experiences of ethnic minority women throughout the criminal justice system and has highlighted the realities of a justice system which frequently fails to respond to the needs, experiences and skills of ethnic minority women. It has explained how robust thinking on race and gender is essential to increase ethnic minority women's access to justice.

Policy makers, criminal justice agencies and the justice sector need to take the following steps to improve the responsiveness of the justice system to the needs, experiences and rights of ethnic minority women.

1. Move away from Silo Thinking

The challenges facing ethnic minority women in the criminal justice system are often missed because agencies and policymakers assume that a focus on 'women' or 'ethnic minorities' is an adequate way of combating race and sex discrimination. Evidence reveals this is not borne out in practice as ethnic minority women sit at the intersection of race and gender, facing discrimination on both grounds. Therefore, targeted criminal justice interventions which focus on White women or ethnic minority men fail to address the different needs of ethnic minority women and the impact of multiple discrimination on these women.

Evidence collection and disaggregation of data is an important step in moving away from silo thinking. The disaggregation of statistics is a fundamental requirement in all UN policies and is also a legal obligation under the Gender Equality Duty and the Race Equality Duty. Data must be collected that can be disaggregated on the basis of both gender and race and used to inform policy and practice.

Chapter 6 Continued

Recommendations

2. Fill the Evidence Gaps

There is a real information gap on the experiences of women in the criminal justice system. Statistics are, at times, collected on the gender or race of victims of crime; workers in the justice system; and suspects and offenders, but there is frequently a complete lack of information as to the intersection between race and gender, let alone the experiences of women from different ethnic backgrounds. Evidence that is collected is frequently patchy, inconsistent and confused (as explored in the introduction).

On many issues, such as ethnic minority women's experiences of sexual violence or the health needs of ethnic minority female offenders, there is a dearth of information. When Government and criminal justice agencies have focused on ethnic minority women and violence they have tended to focus on the experiences of South Asian women, particularly those from Muslim backgrounds. Women from other ethnic minority backgrounds have virtually been invisible in debates on violence against women.

Silo thinking within the criminal justice sector has also led to the racialised categorising of violence against ethnic minority women, so that there has been a focus on violence deemed to be 'cultural' often at the expense of a broader understanding of ethnic minority women's experiences of violence. Criminal justice responses to harmful practices, such as FGM, forced marriage and honour based violence, must be framed within a wider debate on violence against women and the specific needs of ethnic minority women experiencing intersectional discrimination on the grounds of race and gender.

Policy makers and criminal justice agencies must prioritise evidence collection in their strategies to ensure their plans are relevant and suitably targeted to ethnic minority women's needs and rights, and to ensure the representativeness of their workforce.

3. Listen to Ethnic Minority Women

When faced with a system which remains both institutionally sexist and institutionally racist, ethnic minority women face an uphill battle to make their views heard. As marginalised voices within the system, it is difficult to expose sexist and racist practices, particularly as covert discrimination is difficult to challenge and prove. This is compounded by the limited number of ethnic minority women in senior positions within the justice sector. When ethnic minority women are the subject of public policy discourse it is frequently in negative or stereotypical ways such as the disproportionate focus on honour killings.

Criminal justice agencies need to consult ethnic minority women and learn from their experiences and draw on best practice initiatives already in operation. The system also needs to make use of the resources and expertise of specialist ethnic minority women's organisations. Further, a criminal justice workplace culture which embraces diversity in its workforce and utilises the skills and experiences of ethnic minority women is essential to create a responsive, reflective and representative justice system.

There is a need for an in-depth needs assessment of vulnerable ethnic minority women's experiences of the justice system as victims, offender and workers to highlight the gaps and to identify the support which is most effective for ethnic minority women. This should involve consultation with ethnic minority women and specialist service providers and must take into account the preferred pathways of ethnic minority women for engaging with the justice sector.

Chapter 6 Continued

Recommendations

4. Less Talk, More Action

Equality tools already exist which should lead to strong policy development and informed practice. Tools such as the equality duties on public bodies, proposed provisions in the Equality Bill such as positive action and dual discrimination, and the UK's international obligations under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) have the potential to transform the criminal justice system for ethnic minority women. These equality obligations need to be understood, utilised in policy development and implemented in practice.

The Government must assume leadership in ensuring policy is translated into practice and that there is adequate investment in specialist services and programmes for ethnic minority women. Changing mindsets through training on the needs of ethnic minority women and the meaning of substantive equality is also crucial for real change in practice. There must be an embedded understanding that ethnic minority women should not be treated the same as men or the same as women from different ethnic backgrounds but rather that each individual should be treated appropriately according to their distinct needs - whether accused or convicted of crime, accessing justice as a victim or survivor of crime, or working within the criminal justice system.

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About Fawcett

The Fawcett Society is the UK's leading campaign for gender equality. When individual women are able to realise their potential, the benefits will be felt across society.

The Fawcett Society makes a difference by campaigning for legislative change, influencing practice, and empowering women and men to affect change at a grassroots level.

We campaign for:

Economic rights:

women's right to fair pay and fair treatment in the workplace

Political rights:

women's right to a powerful voice in decision making

Social rights:

women and men to break free from stereotypes

Bodily rights:

women's freedom from violence, harassment and objectification

For more information on Fawcett and our work visit www.fawcettsociety.org.uk

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