

1. Race and the Criminal Justice System in Northern Ireland – a scoping study for NICEM

1.1. Introduction

- [1]. Scoping studies ‘aim to map rapidly the key concepts underpinning a research area and the main sources and types of evidence available, and can be undertaken as stand-alone projects in their own right, especially where an area is complex or has not been reviewed comprehensively before’ (Mays et al. 2001: 194). With these differences in mind, Arksey and O’Malley describe the stages of a suggested framework for conducting a scoping study (2005: 8-9). These provide a useful framework for our review of literature on race and criminal justice in Northern Ireland:

Stage 1. Identifying the research question
Stage 2 Identifying relevant studies
Stage 3 Study selection
Stage 4 Charting the data
Stage 5 Collating, summarizing and reporting the results.

- [2]. An additional, parallel element is also suggested regarding the use of a ‘consultation exercise’ to inform and validate findings from the main scoping review (Arksey and O’Malley 2005: 8-9). While this element of consultation has not informed the present draft, a level of consultation would undoubtedly add value to the present study.

1.2. Identifying the research question

- [3]. The research question is framed by the issues of *race* and the *criminal justice system* in *Northern Ireland*. In other words, there are three defining elements of interest – race or ethnicity or BME groups; the criminal justice system (this is defined in some detail below); and Northern Ireland. Each of these elements overlaps and creates areas of interest and different degrees of research and analysis. It is also clear that some elements of current research that has nothing to do with Northern Ireland remains of central interest – particularly developments in the criminal justice system in England and Wales and Scotland. But the focus of this review is the nexus of these three elements – what light does a particular piece of work throw on race and criminal justice in Northern Ireland. There is clearly a specificity to criminal justice in Northern Ireland – not least because criminal justice was so central to the GFA its associated mechanisms – that means that more general discussions around race are situated by that reality.
- [4]. Traditionally debates in the UK focused on the over-representation of Black people in the criminal justice system – particularly among the prisoner population - and the question of whether this was to be explained in terms of Black criminality or racism. More recently - especially post-Macpherson Report - analysis has focused on other issues. For example, the Institute of Race Relations ‘policing and criminal justice’ index provides a stark reminder of just how profound those problems remain in the UK. As the IRR indicates, minority ethnic

people in the UK find themselves trebly discriminated against by the criminal justice system – in terms of *victimization*, *criminalization* and *employment*. We might suggest that this three-fold approach raises the correct questions to be asked about the criminal justice system in Northern Ireland. In fact it would be striking if there were not similar problems within a jurisdiction and a criminal justice system has been subjected to almost none of the reform relating to race implemented within the UK system over recent years.

- [5]. NICEM's work on the issue continues to point towards significant concerns as well as new challenges:

There is also the big focus on the Unite Against Hate campaign which is a good branding campaign but there is some concern that there is too much reliance on this campaign to deal with some of the underlying issues around hate crime and people's perceptions. For us there is the trap that agencies can fall into of relying on this as their stand against hate crime without looking at fundamental issues around access and reform.

There is also a growing trend for organisations to categorise hate crime/harassment as anti social behaviour as there are systems in place for this and these issues seem to get dealt with fairly quickly whereas there still seems to be a struggle to deal with harassment as being motivated by hate. Although personally I think some of this is down to people still not wanting to admit and/or confront behaviours are racist in some cases.

- [6]. NICEM's *The Next Stephen Lawrence?* (2006) suggested:

[S]ix years on from the Northern Ireland Criminal Justice Review and following specific attention in the review to issues of racism and criminal justice, we might expect *first*, equity monitoring in terms of 'racial group' and *second*, a statement of principle showing how the system as a whole will address racial discrimination and *third* a clear strategy as to how community safety for minority ethnic groups is to be delivered. None of these things has happened in any developed or meaningful way despite the huge increase in racist violence detailed above.

- [7]. A further five years down the line, these issues remain central to race and criminal justice in Northern Ireland. None of these goals has been adequately delivered. Any new research needs to first ask why Northern Ireland remains in a 'pre-MacPherson' situation and then proceed to make a definitive intervention towards such delivery.¹

1.2.1. What is the criminal justice system?

- [8]. It is useful to situate this discussion first more generally in terms of the notion of the criminal justice system in the UK. Here we can begin with self-definition by the sector itself:

The criminal justice system (CJS) in England and Wales ... comprises: the crime related work of the following criminal justice departments, agencies and services: Home Office – Police, Prison and National Probation Service and their respective directorates; other central and national police services; and support for victims primarily through an annual grant to the independent charity Victim Support. The Home Office also takes advice from the Youth Justice Board, an executive non-

¹ Maggie Beirne - who as Director of CAJ helped extensively to provide critical guidance on the Next Stephen Lawrence? Report -provided an important critical overview of the first draft of this scoping study.

departmental public body. Lord Chancellor's Department – the Crown Court and Court of Appeal, magistrates' courts, their committees and inspectorates; publicly funded criminal defence services. Law Officers' Departments – Crown Prosecution Service and its inspectorate; Serious Fraud Office. It also includes the judiciary and magistracy. And at a broader level, local authorities and community and other organisations also play an important role. The objectives of the CJS are to reduce crime and the fear of crime, ensure effective delivery of justice by increasing the number of crimes for which an offender is brought to justice, improving public confidence in the CJS, *including increasing that of ethnic minority communities*. Increasing year on year the satisfaction of victims and witnesses, whilst respecting the rights of defendants, and delivering effective custodial and community sentences to reduce re-offending and protect the public. (Home Office 2002: 16, emphasis added)

- [9]. In other words, it is not unusual to have race equality issues regarded as absolutely central to notions of what the criminal justice system is and how it works.

1.2.2. What is the Criminal Justice System in Northern Ireland?

- [10]. Again, it is useful to locate this discussion in terms of self-definition. This is provided by the website for the Criminal Justice System Northern Ireland (CJSNI). As this site suggested, it has been 'designed to help, inform and advise those coming into contact with the system, or those who would just like to know more about it'. The CJSNI suggests that it is made up of seven main statutory agencies:

Northern Ireland Prison Service
Police Service of Northern Ireland
Probation Board for Northern Ireland
Public Prosecution Service
Youth Justice Agency
NI Courts and Tribunals Service
Department of Justice

- [11]. The self-defined purpose and aims of the CJSNI are:

- 'to support the administration of justice, to promote confidence in the criminal justice system and to contribute to the reduction of crime and the fear of crime '
- provide a fair and effective criminal justice system for the community;
- work together to help reduce crime and the fear of crime;
- make the criminal justice system as open, inclusive and accessible as possible, and promote confidence in the administration of justice; and
- improve service delivery by enhancing the levels of effectiveness, efficiency and co-operation within the system.

- [12]. The CJSNI website also suggests:

Dealing with crime in an effective way is what we're here to do. But we can't do that without the co-operation of the community as a whole. We are committed to working in partnership to achieve our aims for the benefit of all of society.

- [13]. Northern Ireland is unique in UK terms in having an integrated criminal justice inspectorate. Criminal Justice Inspection Northern Ireland (CJI) provides a slightly different perspective on

the notion of criminal justice in Northern Ireland.² The CJI defines itself as, ‘an independent, statutory inspectorate established in 2003 under s.45 of the Justice (Northern Ireland) Act 2002’.

CJI is one-of a-kind as it is the only unified inspectorate in the United Kingdom or Ireland that can look at all the agencies that make up the criminal justice system apart from the judiciary. Agencies which CJI can inspect include the police service, prison service, prosecution service, youth justice services and the courts. This means CJI is in a unique position to identify issues that are common to some or all agencies and is in a strong position to promote inter-organisational learning and best practice across and between the various agencies.

[14]. The CJI situates itself in relations to the criminal justice system in Northern Ireland:

The criminal justice system is the collective term for the agencies and processes by which victims, witnesses, defendants, offenders and young people who experience, come into contact with, or engage in criminal activity are dealt with and/or supported. The criminal justice system in Northern Ireland is made up of five key agencies that represent the ‘coal face’ of criminal justice that interlink together to provide a fair, effective justice system for the local community. They are the Police Service, the Prison Service, the Prosecution Service, the Court Service, the Probation Service and the Youth Justice Agency. These core agencies are supported in the delivery of criminal justice services by Government and a number of supporting agencies such as Criminal Justice Inspection Northern Ireland, Forensic Science Northern Ireland, and the Police Ombudsman’s Office. Valuable support and assistance is also provided by organisations within the voluntary and community sector such as Victim Support Northern Ireland and the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO).

1.2.3. Department of Justice in Northern Ireland

[15]. The political content for criminal justice has obviously profoundly changed by the devolution of many justice responsibilities to the recently created Department of Justice and Minister of Justice. This self-defines thus:

The Department of Justice (DOJ) is a new Northern Ireland Department which came into existence on 12 April 2010 and was established by the Department of Justice Act (Northern Ireland) 2010. It has a range of devolved policing and justice functions, set out in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. The role of the Department is to support the Minister of Justice, David Ford MLA to help keep the people of Northern Ireland safe. In addition to its statutory functions, the department provides resources and a legislative framework for its agencies and arms length bodies (which together constitute most of the justice system in Northern Ireland). Together with these organisations the department is responsible for ensuring there is a fair and effective justice system in Northern Ireland and for increasing public confidence in that system.

[16]. The Department has five agencies and it characterises their work thus:

The Northern Ireland Prison Service (NIPS) is an executive agency of the Department of Justice responsible for providing prison services in Northern Ireland. By working

² CJI is a ‘Non-Departmental Public Body (NDPB) in the person of the Chief Inspector’.

with prisoners and stakeholder organisations it also aims to reduce levels of re-offending.

The Northern Ireland Courts and Tribunals Service (NICTS) is an executive agency of the Department of Justice. It provides administrative support to the Northern Ireland courts and tribunals, and to the Judiciary; enforces civil court judgments through the Enforcement of Judgments Office and sponsors the work of the Northern Ireland Legal Services Commission.

The Compensation Agency (CA) is an executive agency of the Department of Justice responsible for supporting the victims of crime, either by personal injury or criminal damage, by ensuring that they are appropriately compensated in accordance with relevant statutory schemes.

The Forensic Science Agency (FSNI) is an executive agency of the Department of Justice responsible for the provision of effective scientific advice and support to enhance the delivery of justice.

The Youth Justice Agency (YJA) is an executive agency of the Department of Justice responsible for preventing offending by children and young people through delivery of a range of community based, court ordered and diversionary interventions, youth conferencing and the provision of custody where necessary.

- [17]. The Department also sponsors a number of Non-Departmental Public Bodies/bodies affiliated with policing and justice. Crucially it provides a new Northern Ireland-specific focus for work on race and criminal justice. Arguably this presents new opportunities for progressive changes in terms of racism and the criminal justice system in Northern Ireland.

1.2.4. Equality Duty – Section 75

- [18]. There is a crucial question in terms of the operation of the Section 75 equality duty and the criminal justice system in Northern Ireland. Initially the criminal justice system tried to argue that it did not apply but had to withdraw the claim. More recently, however, the debate has been couched in terms of the effectiveness of Section 75 on the sector. The CJINI published a report two years ago specifically addressing this question:

CJI examined in detail the impact of section 75 (s.75) of the Northern Ireland Act 1998 on the criminal justice system, and how each of the organisations are managing their obligations,” said Dr Maguire. “Our findings revealed that while all agencies were aware of their responsibilities under the law, the information Inspectors examined in many cases was incomplete and only provided a limited picture of what was happening across the system.” Section 75 he explained charged all public sector organisations, including those in the criminal justice sector, with ensuring equality and human rights are promoted in every aspect of their operation, policies and practice. “Without the monitoring of effective, accurate and timely equality information, agencies cannot fully meet these obligations, identify any inequalities that may exist, take action to correct any disparity, or establish the reason or reasons behind it,” explained the Chief Inspector.

- [19]. This process provide examples of what effective monitoring could and should achieve:

“The information we examined in relation to the Northern Ireland Prison Service for example,” he said, “identified a number of issues in relation to the ways in which prisoners were treated and the make up of the workforce.” It showed that a disparity

existed between the number of prisoners from a Roman Catholic background that are on the highest level of the Progressive Regimes and Earned Privileges Schemes when compared with Protestant prisoners. It also showed the predominantly male workforce within the Prison Service's discipline staff came from a Protestant background. "This information has been valuable to the Prison Service and has prompted it to carry out an internal review of the available monitoring information to establish the reasons behind any disparities which exist,"

- [20]. But the review also made clear the profound limitations of data gathering across the system:

[W]ithout the availability of similar in-depth information on the other criminal justice agencies, Dr Maguire said organisations were unable to ensure any other as yet unidentified issues that may exist, were brought to light and addressed. "This inspection has shown that the collation and monitoring of effective, accurate and timely equality information lies at the heart of each agency's ability to fulfil their legal obligations in respect of section 75," he stated. "It is also the key to ensuring equality of opportunity and fairness of treatment among different members of the community, is at the core of the criminal justice system whether you are a defendant, victim, prisoner or witness."³

- [21]. Subsequently following a debate in the Assembly, members supported the motion that. 'the recommendations published in the Criminal Justice Inspection's report on the impact of section 75 on the criminal justice system; and calls on the relevant agencies to implement the recommendations'.⁴

- [22]. It is difficult to argue with the conclusions of the CJI:

The challenge is very much for the criminal justice system to grasp the opportunity that section 75 offers. Given the history of Northern Ireland, it offers the agencies a way to engage with difficult to reach communities, and to demonstrate to the public at large, that the system is operating fairly and equitably. It is a legal duty and one which cannot be ignored but, we are convinced that ultimately, it will be in the best interests of the criminal justice system to see it as an opportunity and grasp it with both hands. (2009:40)⁵

- [23]. In other words there is a need to examine the effectiveness of Section 75 in relation to the criminal justice system within the wider question of the unfilled promise of the equality proofing mechanisms consequent upon the Good Friday Agreement. Arguably Section 75 has become a mechanistic tool, but it in fact could be a radical tool to argue that public bodies (including criminal justice entities) should be looking at race (and other issues) in the course of every single new/revised policy; this should clearly affect data gathering, staff training, and outreach to representative groups. The fact that public bodies started to speak to NICEM and other groups was consequent upon the realisation that they had to identify representative groups to engage them in participative processes. The fact that civil servants have now arguably turned this into a tame way of 'controlling' the debate is problematic, but is definitely crucial to explore what difference this makes – or more importantly *should* make – to race and the Northern Ireland criminal justice system.

³ CJINI 2009. 'Greater effort needed to promote equality across criminal justice system' 12 May 2009.

⁴ PRIVATE MEMBERS' BUSINESS Criminal Justice Inspection's Report on Section 75 22nd June 2009

⁵ CJINI 2009. *The impact of Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland Belfast: CJINI.*

1.3. Identifying relevant studies

- [24]. There are three key categories of work on race and the criminal justice system which have direct bearing on any analysis for the specific situation in Northern Ireland: NGOs, academia, and the statutory sector. Each of these styles itself and its work on criminal justice and race slightly differently but they are all central to the subject of this research.

1.3.1. NGOs - human rights and anti-racism

- [25]. Activist groups continue to provide a great deal of critical analysis of the criminal justice system and race in the UK. Four of the most important are IRR, Monitoring Group,⁶ Inquest⁷ Statewatch.⁸ Each of these has a grounded experience of research and documentation pertinent to its own area of work on the criminal justice system. For example, INQUEST suggests:

INQUEST's monitoring has revealed that a disproportionate number of Black people and those from minority ethnic groups have died as a result of excessive force, restraint or serious medical neglect. We believe this is indicative of institutional racism in the criminal justice system. Black deaths in custody must be seen in the context of the disproportionate overuse of prison for black people, the plight of immigration detainees, the treatment they receive and the overuse of control and restraint techniques and segregation. While the number of restraint related deaths are a small minority of the total numbers of deaths they have been the most controversial because of what they have revealed about the excessive use of force by functionaries of the state. INQUEST's casework and monitoring has found that more than 400 people from BME communities have died in prison, police custody and secure training centres since 1990. In 2007 alone BME deaths made up 25% of self-inflicted deaths, and 19% of all deaths in prison. INQUEST has been involved in supporting the families in a high number of cases of black deaths in custody such as the restraint-related deaths of Roger Sylvester and Rocky Bennett and are continuing to closely monitor such deaths. (2010)

- [26]. This kind of evidence is indicative of more systemic concerns around race and criminal justice. As the IRR indicates, minority ethnic people in the UK find themselves trebly discriminated against by the criminal justice system – in terms of *victimization*, *criminalization* and *employment*:

People from ethnic minority backgrounds are effectively discriminated against three times over when it comes to crime and the whole criminal justice system. They are more likely than white people to be victims of crime; they are likely to receive much harsher penalties than their white counterparts; in terms of employment the legal establishment is almost uniformly white and ethnic minorities are under-represented in both the prison and police services. IRR 2002)

- [27]. NGOs continue to be crucial to monitoring and defining issues relating to race and criminal justice. In the British context, they provide a great deal of forensic detailing across the

⁶ The Monitoring Group - Southall-based group supporting victims of racial and domestic violence across the UK. For help with racial harassment, policing or domestic violence issues <http://www.tmg-uk.org>

⁷ Inquest - Campaigns against deaths in custody and for changes in the Coroner's Court system. <http://www.inquest.org.uk/>

⁸ Statewatch 2009. 'Monitoring the state and civil liberties in the European Union'

criminal justice system. These provide a key referent in any work on race and criminal justice in Northern Ireland. In the Northern Ireland context, NICEM has clearly played a pre-eminent role in this regard with a well developed system of statement taking and legal intervention on racist harassment.

1.3.2. Academic research - ethnicity, racism and criminal justice

- [28]. In terms of wider international and UK discussions on race and criminal justice there have been a number of important new analyses. The issue remains central to criminology around the world – witness the *Encyclopedia of Race and Crime* (Greene and Gabbidon 2009). But this criminology has changed over recent years – particularly in the UK in the wake of the Stephen Lawrence Inquiry. For example, Phillips and Bowling move beyond the confines of the traditionally defined ‘race and crime’ debate by identifying a range of neglected issues such as racist violence, deaths in custody, prison racism, and the experiences of ethnic minority practitioners. They also move beyond the elevated crime rates versus discrimination debate to ask how official crime rates among specific ethnic groups become ‘elevated’, what explains the disproportionate outcomes in the criminal justice process, and by attempting to make linkages between crime, criminal justice practice, and its broader historical and social contexts. (Phillips and Bowling 2007) This is analysed in further depth in their book *Race, Crime and Criminal Justice* (Bowling and Phillips 2002)

- [29]. The edited collection *Race and Criminal Justice* by Hindpal Singh Bhui (2008) features chapters by leading experts. This work provides a specialist introduction to each area of the criminal justice system, including police, prosecution, prisons and probation. It also features discussion of contemporary issues, such as criminal justice responses to refugees and asylum seekers, and the experiences of Muslims within the criminal justice system post-9/11 and 7/7. Likewise *Understanding Race and Crime* by Colin Webster (2007) provides a conceptual framework in which it suggests racism, race and crime might be better understood. It traces the historical origins of the association of crime and racism and how fears and anxieties about race and crime become rooted in places destabilized by rapid social change. None of these works, however, deals with the specificity of the nexus of race and criminal justice in Northern Ireland.

- [30]. Beyond the UK model, there is also important new comparative international work: *Race, Crime and Criminal Justice: International Perspectives* (Kalunta-Crumpton 2010) and *Race, Ethnicity, Crime, and Justice: An International Dilemma* (Gabbidon 2010). As might be expected, the new literature also includes a particular concern in US analysis e.g. : *Race Crime & Justice* (Gabbidon and Taylor Greene 2005, 2009). And: *The System in Black and White: Exploring the Connections Between Race, Crime and Justice* (Markowitz and Jones-Brown 2000). Once again, however, while providing vital general analysis of race and criminal justice, these publications offer little in terms of the specificity of the Northern Ireland situation.

- [31]. In terms of an overview of the situation in Northern Ireland, NICEM’s own *The Next Stephen Lawrence?* (2006) remains a crucial text. There is a general dearth of discussion on racism and criminal justice in Northern Ireland. This is partly explained by the lack of statutory data – which itself remains indicative of a problem. Crucial data are still not being collected and/or made public by the criminal justice system. More generally, it might be suggested that the ‘good relations’ approach to state management of racism and sectarianism confuses race and sectarian issues. This paradigm collapses and merges analyses and practices relating to BME populations and Protestant and Catholic populations. It could be argued that there is a need for clarity on conceptual framework for understanding racism and sectarianism – certainly the issue of ‘readacross’ continues to inform sensitivities on monitoring and addressing racism effectively in Northern Ireland.

- [32]. The only other significant publication specific to the situation in Northern Ireland is *Policing, Accountability and the Black and Minority Ethnic Communities in Northern Ireland* (Radford, Katy, Jennifer Betts and Malcolm Ostermeyer 2006). This was commissioned by the Northern Ireland Policing Board (NIPB) and the Office of the Police Ombudsman for Northern Ireland (OPONI). These statutory bodies commissioned the Institute for Conflict Research to undertake research on attitudes towards, and experiences of, the new policing arrangements in Northern Ireland by individuals from the black and minority ethnic (BME) population. The main issues addressed are the BME population's attitudes towards and knowledge of the PSNI, NIPB and District Policing Partnerships (DPPs); and OPONI. The research identified both progressive developments on race associated with the new policing structures as well as continuing issues of concern.

1.3.3. The Statutory Sector and Race

- [33]. The Statutory Sector in the UK produces a huge amount of relevant research and analysis directly and indirectly relevant to race and justice. As discussed in detail below the Home Office's annual *Statistics on race and the criminal justice system* makes a defining contribution to discussions on this issue. But there have also been two public inquiries over the last ten years which addressed very specifically and directly institutional racism within the criminal justice system – the *Stephen Lawrence* and *Zahid Mubarek* inquiries. Both of these – and their outworkings – should be definitive comparators in analysis of race and criminal justice in Northern Ireland. The recent report by the Northern Ireland Prisoner Ombudsman into the circumstances surrounding the death of 'Prisoner B' also provides an important referent for any further work in this area.

The Stephen Lawrence and Zahid Mubarek Inquiries

- [34]. There have been two key statutory processes in the UK over recent years: the Stephen Lawrence Inquiry and the Zahid Mubarek Inquiry. The Lawrence Inquiry redefined relations between BME people and the state in England and Wales. It also placed the notion of institutional racism at the heart of British policy and practice on race and criminal justice. The definition was accepted by the Government when the report was published. The then Home Secretary, Jack Straw, emphasised the relevance of the definition for other governmental departments, particularly those involved in criminal justice:

‘[The definition formulated by the Stephen Lawrence Inquiry] is the new definition of institutional racism, which I accept... In my view, any long-established, white-dominated organisation is liable to have procedures, practices and culture that tend to exclude or disadvantage non-white people. The Police Service, in that respect, is little different from other parts of the criminal justice system or from government departments, including the Home Office. ‘

- [35]. NICEM's *The Next Stephen Lawrence?* research (2006) has already extensively referred to the implications of the Lawrence Inquiry for Northern Ireland. These need to be restated and re-emphasised. But further research on race and criminal justice should also pay specific attention to the Mubarek Inquiry. This engaged with institutional racism in the British prison service in some detail:

The issue of racism was at the heart of the Inquiry. Not simply because Zahid's killer was himself a racist, and his racism may have played an important part in his selection of Zahid as his victim. It was also because of the need to explore whether explicit racism on the part of individual prison officers had been the reason for Zahid

sharing a cell with Stewart in the first place or continuing to share a cell with him. There were lurid allegations about prisoners of different ethnic origin being put in the same cell to see if violence would ensue. It has been necessary also to explore the extent to which racism might have unwittingly played its part in what happened to Zahid. That could not be answered in a vacuum. It could only be answered in its context. And this was that the Prison Service in general, and Feltham in particular, had already been found to be institutionally racist – both by the Prison Service’s own investigation into Feltham and the one by the CRE into the Prison Service as a whole. So one of the Inquiry’s key tasks was to investigate whether the series of events which resulted in Stewart sharing a cell with Zahid, despite what was known about him, were attributable to the culture of indifference and insensitivity which institutional and individual racism breeds. (Keith 2006: Volume 2: 617)

- [36]. It also has wider implications in terms of the interface of race and religion and criminal justice – these are particularly important obviously in terms of Northern Ireland:

Although the religious needs of Muslim prisoners are, generally speaking, better catered for now than they were some years ago, unpublished research conducted on behalf of the Prison Reform Trust suggests that Muslim prisoners are experiencing the backlash of what many observers believe to be an increased level of Islamophobia in society. Maqsood Ahmed, the Muslim Adviser to the Prison Service, was inclined to think that such backlash as there might be is muted and low-key. In any event, any impressions are likely to be affected by the larger number of Muslims being sent to prison, and the fact that many of them are devout. The Inquiry’s terms of reference did not, of course, permit it to investigate generally how Muslim prisoners are treated in prison. It is an important topic which should be properly investigated by professionals in the field. But the perception that Islamophobia is on the rise highlights the fact that the definition of institutional racism adopted by the Stephen Lawrence Inquiry focused on discrimination and prejudice because of a person’s colour, culture or ethnic origin. It did not refer to the person’s religion. There is no reason why institutional prejudice should be limited to race, and thought should be given by the Home Office to recognising the concept of institutional religious intolerance. Since the Stephen Lawrence Inquiry’s definition of institutional racism was accepted by the Government, there is no reason why it should not be adapted to define institutional religious intolerance as follows: ‘The collective failure of an organisation to provide an appropriate and professional service to people because of their religion. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping which disadvantage people of a particular religion’. (Keith 2006: Volume 1 546, 62.27)

- [37]. While the ‘Next Stephen Lawrence?’ report dealt in some depth with the implications of the original report for race and criminal justice in Northern Ireland, it is also important to take into account reflections on - and the review of - this process in England and Wales. Here *The Macpherson Report — Ten Years On* (2009) provides a key reference. The review suggests that the Home Office believed that 67 of Macpherson’s 70 recommendations have been implemented fully or in part. The report acknowledges that: ‘The police have made tremendous strides in the service they provide to ethnic minority communities and in countering racism amongst its workforce’. It commends police leadership who ‘have shown a clear commitment to increasing awareness of race as an issue throughout the service.’ But it also identifies continuing problems suggesting there are a number of areas in which the police service continues to fail ethnic minorities (2009: 4). Among its reservations it notes that: ‘Black communities in particular are disproportionately represented in stop and search statistics and on the National DNA Database’ and ‘black people’s over-representation in the criminal justice system’. It also recorded its disappointment:

that the police service will not meet its target to employ 7% of its officers from ethnic minority communities nationally by 2009 and that BME officers continue to experience difficulties in achieving promotion, as well as being more likely to be subject to disciplinary procedures. The police service must now focus its efforts on tackling issues of discrimination within the workforce. (2009: 7)

- [38]. There are also other, much more critical reflections on the outworkings of Macpherson in the UK. Former Stephen Lawrence Inquiry member, Richard Stone identifies many ways in, 'which the relationship today between the police and Black and minority ethnic groups has not changed significantly from what it was 10 years ago. This is evident in terms of the challenges faced by officers from [BME] backgrounds who work for the police service and, in a chilling echo of the old 'sus' laws, the continued over-representation of black people in ... Stop and Search procedures' (Statewatch 2009)

Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Prisoner B

- [39]. There is also one statutory inquiry process in Northern Ireland which is immediately relevant to the analysis of race and criminal justice. Prisoner B was a Chinese national held on remand in Maghaberry Prison. He was 36 years old when he died by suicide in his cell in Lagan House, Maghaberry Prison, on the night of Sunday 8 March 2009. The Prisoner Ombudsman for Northern Ireland had responsibility for investigating the death of Prisoner B.

- [40]. The report makes no assessment of racism in the circumstances surrounding this death. But there are factors which suggest the need for further investigation. For example, the 'lock down' which clearly contributed to the Prisoner's depression was apparently a consequence of racist violence directed towards Chinese prisoners:

The reference to "a period of lock down" resulted from all prisoners in Lagan House being confined to cell for a number of days, following an attack on Chinese prisoners by other prisoners on 13 November 2008. It is unclear from prison records for how long the prisoners in Lagan House were unable to leave their cells for association. Chinese prisoners have said that the lock down lasted several days. (2010: 51-2)

- [41]. This suggests that the victims of a racist attack were punished in exactly the same manner as the perpetrators. In this case this contributed directly to the death of the prisoner. It is difficult to say much more than this since the incident is discussed in no further depth.

- [42]. There is however some further general discussion pertinent to this issue:

Prisoner B was one of 48 Chinese prisoners taken into custody around the same time, on the back of a PSNI operation. The investigation found that the Prison Service had made efforts to be responsive to the particular needs of the Chinese and other foreign national prisoners. The action taken and the findings of an inspection in 2009 in respect of these are described in Section 11 of this report (2010: 105-9).

- [43]. Section 11 of the report (2010: 105-9) discusses these issues under the headings 'NIPS Draft Foreign National Strategy 2008-2010' and 'Ongoing Challenges in respect of Foreign National Prisoners'. While these are neither limited to problems with racism nor necessarily relevant in terms of other BME prisoners, they clearly should have some awareness of racism as an issue. This should at least overlap with any strategy on combating racism in the prison service – especially since there is already evidence of racist violence causing significant problems, not least contributing to the death of a prisoner. Section 11, however, says nothing

about racism other than mentioning the need for ‘relevant training in cultural, racial and diversity issues’ (2010: 106)

- [44]. In reality, this report is more striking in terms of what it does not say than what it says. There is no assessment of the role that racism or institutional racism might have played in the circumstances surrounding the death of Prisoner B. Of course, since the question is not engaged, we don’t know that racism *was* a key factor in this death – but we would expect the question to be asked. It is further indication of the pre-Macpherson characterization of the criminal justice system in Northern Ireland – in this case the prison service.

Northern Ireland Criminal Justice Review

- [45]. The Good Friday Agreement provided for a ‘wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others ‘ (Criminal Justice Review Group 2000: 1). The terms of reference for this review were:

Taking account of the aims of the criminal justice system as set out in the Agreement, the review will address the structure, management and resourcing of publicly funded elements of the criminal justice system and will bring forward proposals for future criminal justice arrangements (other than policing and those aspects of the system relating to emergency legislation, which the Government is considering separately).... (Criminal Justice Review Group 2000, 1-2).

- [46]. In other words, the review had some reference to race and criminal justice in theory and it also addressed this in practice. Its deliberations included some discussion of the import for Northern Ireland of the Macpherson report:

The inquiry into matters arising from the death of Stephen Lawrence was completed in February 1999. Although it was concerned with events in another jurisdiction, we considered what impact it might have on our deliberations. Four of the report’s recommendations were about witnesses and victims. It was recommended that: there should be improved guidelines for the handling of victims and witnesses, particularly in the field of racist incidents and crimes; proactive use should be made of contacts within ethnic minority communities to assist with victim support and working with sensitive witnesses; trained victim/witness liaison officers should be available and used in racist incidents and where a sensitive approach to young and vulnerable witnesses and victims was required; and appropriate bail conditions should be used to prevent the intimidation of victims and vulnerable witnesses. These recommendations were accepted by the Home Office, which announced a number of initiatives to develop good practice and drew attention to relevant work already being carried out in relation to vulnerable or intimidated witnesses. (Criminal Justice Review Group 2000: 317)

- [47]. The review also addressed aspects of race and criminal justice, albeit in very little depth:

We also received comments to the effect that the judiciary was unrepresentative from a class perspective and it was observed that there was no-one from an ethnic minority on the bench. (Criminal Justice Review Group 2000: 119)

We gave careful thought to whether the judiciary should be monitored by gender, ethnicity and community background. Clearly gender does not create a difficulty and parliamentary questions have been answered in which the gender balance of the

various tiers of judiciary has been given. However, the question of community background, assessed on the basis of religious affiliation, is more problematic.... On balance we do not wish to recommend that fair employment legislation be applied to the judiciary, as to do so would have implications for their independence; but we do believe that the principles underpinning that legislation should be applied and be seen to be applied. We are conscious that this is a matter of considerable concern and that there are perceptions in a number of quarters about an imbalance, perceptions which may not be entirely well founded. We do not propose that existing members of the judiciary be asked about their religion although we believe that, if ways could be found to give an indication of the religious balance of the bench, this would help boost public confidence.

We do understand the reluctance of some to contemplate a situation where applicants for judicial posts are asked for information about their religious or ethnic background. It could be taken as implying a 'representative' role for judges of the type that we have made clear is not appropriate; and this might be seen as having implications for judicial independence. On the other hand this form of monitoring and good practice for employment purposes is accepted throughout Northern Ireland and does not compromise the merit principle; and monitoring of this kind is carried out in England and Wales in relation to ethnic background. (Criminal Justice Review Group 2000: 140-1)

We recommend that consideration be given to finding a satisfactory way, with the assistance of proxy indicators if necessary, of assessing for statistical purposes the religious background of applicants for judicial posts and of those who wish to be included in the database. There would also need to be assessment for statistical purposes of the ethnic background of applicants. This information would not be available to those involved in the selection process. (2000: 141, original emphasis).... Consistent with normal fair employment practice, there would be no question of publishing information about community background in a way that would enable individuals to be identified. However, we would expect the annual report of the Judicial Appointments Commission to make reference in general terms to the background of applicants to posts by reference to religion, gender, ethnicity, disability and geographical location. (Criminal Justice Review Group 2000: 141)

We recommend that in developing a community safety strategy for Northern Ireland specific consideration be given to [inter alia] the needs of ethnic minority communities; (Criminal Justice Review Group 2000: 270)

- [48]. The key point about the review was that it emerged from the Good Friday Agreement. It followed that the primary concern was the aspects of criminal justice that might have been related to the conflict in Northern Ireland over the past thirty years. In this sense, it was very clearly not about 'race' and the BME community in Northern Ireland. It paid little attention to the silences and failings of the system in terms of race and could not be regarded as an alternative to the post-Macpherson review that took place in England and Wales and Scotland. Moreover, it paid no attention whatsoever to the place that the new notion of 'institutional racism' could or should have within criminal justice in Northern Ireland.

1.3.4. Policing, Racism and Criminal Justice in Northern Ireland: Beyond MacPherson and the Criminal Justice Review

- [49]. There has been an episode of sustained interest in policing and racism in Northern Ireland since NICEM's *The Next Stephen Lawrence?* report. The notion of Northern Ireland as the

'race hate capital of Europe' idea has continued to be advanced. This issue attracted particular interest following the 'pogroms' of Roma families in Belfast in 2009. Moreover, this issue was inseparable from questions about how racist violence was being policed. This episode attracted significant worldwide attention as well as reminding people that the issues of racist violence and policing racism had not gone away in Northern Ireland. Arguably the 'riot' involving Northern Ireland and Polish soccer fans earlier in the year had been just as significant in terms of marking a new juncture in the relationship between BME groups and criminal justice. In other words, the question of race and criminal justice in Northern Ireland retains its immediate relevance.

- [50]. The *Next Stephen Lawrence?* report clearly had some impact in terms of raising issues and changing policy and practice, it did not create a context in which racist violence would be policed significantly differently. NICEM's continuing work points to both positive changes and significant challenges in policing and minority ethnic communities:

There also seems to still be a huge lack of understanding of the hate crime legislation. There are calls to reform it or have new legislation but the fundamental problem from our perspective is that people still do not see hate crime as having any greater impact than other crime. Without this fundamental change in perspective any legislation will be unhelpful as there will still be no understanding of why it should be there. Along with this is this new push to have crimes against the elderly added into hate crime which for me is evidence of the system not understanding the dynamics of hate crime and the perceived vulnerability of groups. This is reflected in the small number of people actually convicted under this legislation.

I would also add the change within the PSNI to their Network Support Officers. These are internal facing posts to support BME, LGBT and Women. There were three officers in post for each category and they have recently done away with these posts. The Rainbow Project has led the objections to this and we have joined with them and Women's Aid. This in relation to point 30 of the scoping paper in relation to employment of BME officers. Our take is that if the internal support is not there how willing will be people be to join the force given the miniscule representation. These posts were a direct response to an EQIA done in 2007, they have taken them away but have not yet provided a satisfactory answer as to how they are going to meet their obligations in this area.

Along with this restructure is the change to the Hate Incident Minority Liaison Officers. They are changing the structure so that it is now Neighbourhood Policing Sergeants that have this title with the thought that they will delegate this to their teams. However this sounds to us much like the old system where it was assumed that everyone had the skills to deal with victims of hate crime.

- [51]. The ongoing performance of the PSNI therefore bears scrutiny in the light of developments since *The Next Stephen Lawrence?* Report. But it also bears emphasis that there have been significant improvements in policing both racism and minority ethnic communities over that time. Arguably, the report left the remainder of the criminal justice system almost untouched and these other elements of criminal justice might merit specific attention in any further research.

1.4. Study selection – Towards implementing the lessons of Macpherson in Northern Ireland

1.4.1. The British model

- [52]. The British model post-Macpherson was based on the acceptance that there was a problem in terms of race and criminal justice and that the key issue was to put this right:

We cannot claim to have a CJS that is fair, transparent and that commands the respect of the public it serves when we are unsure that people from minority ethnic communities are getting a fair deal. People from minority ethnic communities want the same as the rest of the population – a fair system; not one based on prejudice or political correctness.... We need to get beneath the surface of race issues in the CJS. To do this we are establishing a new unit located in the Home Office but working across all CJS departments and agencies.... The unit's work will cover the whole of the CJS and build on the achievements of the Lawrence Steering Group. It will report to The Home Secretary, Lord Chancellor and Attorney General. We want the new unit to work closely with all stakeholders and existing organisations dealing with race and the CJS. Most importantly it will need to establish strong working relationships with minority ethnic communities. The unit will need to be involved in the work of the Lawrence Steering Group and the sub-groups it has established to build on the Steering Group's work and achievements. (Home Office 2002: 11-12)

- [53]. As the original 'Next Stephen Lawrence?' report made clear, post-Macpherson the benchmark for statutory sector movement on race and criminal justice was England and Wales. Here the combination of changes following Macpherson and the provisions of the Section 95 of the Criminal Justice Act 1991 ensure the provision of key baseline data. This does not mean, however, that the British model is above criticism nor does it mean that it cannot be improved on or customized in a Northern Ireland context. (The PSNI definition of 'racist incidents' which specifically includes Travellers is a model of good practice in this regard.) But it does suggest that until the CJSNI implements the key elements in the British model, it will remain profoundly problematic in terms of its approach to race and justice.
- [54]. This approach as it might be applied to Northern Ireland is not particularly difficult to comprehend. The argument is that Macpherson is the metre for policy and practice on criminal justice in Northern Ireland and that until Macpherson is implemented in full (allowing for the specificity of the Northern Ireland criminal justice system) justice for BME people in Northern Ireland will be profoundly compromised.

1.4.2. The Scottish model

- [55]. The Scottish model is important to Northern Ireland because Scotland was not formally covered by the Macpherson process. It required a separate political and judicial process to engage with the implications of Macpherson for Scotland. Yet, in comparison to Northern Ireland, the challenge was taken very seriously. Importantly Scotland chose to implement the Macpherson recommendations fairly quickly (BBC 1999).
- [56]. As the Scottish Parliament records under the banner headline ACTION IN SCOTLAND FOLLOWING THE MACPHERSON REPORT:

The MacPherson report on the murder of Stephen Lawrence was published on 24th February 1999. While the Lawrence Inquiry related to events in England, the report has had important consequences for Scotland, notably: [Stephen Lawrence: An Action Plan for Scotland](#) was published in July 1999 with consultation until September 1999. A Steering Group was set up by the Scottish Executive chaired by Dr Raj Jandoo, to oversee the work contained in the Action Plan. It first met on 7th February 2000. ACPOS Racial Diversity Strategy was published in March 2000. [A Fair Cop? Thematic inspection of police complaints](#) was published in April 2000. [Without Prejudice? Thematic inspection of police race relations](#) was undertaken between May and November 2000 and the report published in January 2001. [Review of the Stephen Lawrence Action Plan](#) was published in February 2001. (Scottish Parliament 2000, emphasis added)

[57]. Thus the Scottish Executive published an action plan for Scotland immediately and then established a Steering Group to oversee implementation of the action plan. This group, chaired by Deputy First Minister Jim Wallace, oversaw the implementation of the Stephen Lawrence inquiry recommendations.. Chaired by Mr Wallace, the Group included representatives from the police, Crown Office, other criminal justice agencies and independent members. Examples of the major work it was involved in include:

- the police Racial Diversity Strategy and the police Guidance Manual on Race Matters;
- police national policy on recruitment and retention of minority ethnic officers;
- Scottish Police College anti-racism training;
- developing performance indicators for inspections of the police in Scotland;
- the drafting of a Scottish Executive Code of Practice for reporting and recording racist incidents for public sector bodies;
- Crown Office work on prosecuting racist crime.

[58]. In February 2001 the Group produced a review of the Scottish Executive Stephen Lawrence action plan and made a number of recommendations for future work. The Group completed its work in 2002. Again, while this process may have been far from perfect, it contrasts starkly with the lack of any activity from within criminal justice in Northern Ireland.

[59]. Further work in Northern Ireland would benefit greatly from an updating and critical assessment of the situation in contemporary Scotland. This provides the most obvious template for measuring the model of integrating post-Macpherson reforms to the criminal justice in the UK but outside the immediate English frame of reference.

1.4.3. Difficulties with ‘Readacross’

[60]. One of the major problems in terms of race and criminal justice is often unacknowledged – the anticipated problems of ‘readacross’. This is essentially the problems that attach to government introducing race-related measures that then readacross to sectarianism or vice versa. Thus for many years the resistance to introducing race equality legislation in Northern Ireland was less attached to the desire not to protect BME people from discrimination but rather from the anticipated difficulties of affording new or ‘double-dip’ protection to victims of sectarian discrimination.

[61]. This issue is not going to go away. Over recent years there has been a convergence of anti-racism and anti-sectarian measures in Northern Ireland within the ‘good relations’ paradigm. This process carries with it many contradictions. Rather oddly the PSNI now categorize *three* separate categories of hate crime within this – racist, sectarian and religious. In contrast new

interventions like the CSI document appear to collapse the difference between racism and sectarianism in Northern Ireland completely (OFMDFM 2010). Either way, it becomes increasingly difficult to ignore the profound overlap between 'religion' and race in much of this work. There are equally forces moving in this direction in the British context. For example, in October 2010 Lord Avebury (Liberal Democrat) asked of the government in the House of Lords:

whether they will provide that the annual Statistics on Race and the Criminal Justice System include all available information about the religion or beliefs of the defendants and victims; and that separate tables are given for racially and religiously aggravated offences.

- [62]. To which the government in the person of Lord McNally (Minister of State, Justice; Liberal Democrat) replied:

The Ministry of Justice Head of Profession for Statistics is responsible for the content and timing of Statistics on Race and the Criminal Justice System, and takes very seriously the view of users of the publication. Police data on racially or religiously aggravated offences have been published in the report since 2002 and tables showing the figures for individual police force areas have been published since 2003. Due to the way in which police figures are recorded, it is not possible to separate offences that are racially aggravated from those that are religiously aggravated. The religion and belief of defendants and victims has been collected by the CPS since April 2007, and we are assessing data quality for inclusion in the next publication. The Ministry of Justice's chief statistician is responsible for the timing and content of statistical releases and will ensure that if the data are of sufficient quality it will be published.⁹

- [63]. Thus while the British model fails to disaggregate racially and religiously-aggravated offences, the interest in recording and identifying both is not specific to Northern Ireland. The Mubarak Inquiry further integrated notions of 'religion' into the UK race paradigm. Crucially, however, any intervention on race and criminal justice has to remain cognisant of the reality that many of the sensitivities on this issue remain connected to the overlap with sectarianism within the criminal justice system.

1.5. Charting the data

- [64]. The literature confirms that the key issue in Northern Ireland remains the absence of data in the public domain on race and criminal justice. Thus there is no comparable data to that provided by the Ministry of Justice under Section 95 of the Criminal Justice Act 1991. This states that:

'The Secretary of State shall in each year publish such information as he considers expedient for the purpose of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground.'

- [65]. The consequent data brings together statistical information on the representation of BME people as suspects, offenders and victims within the Criminal Justice System and as employees/practitioners within criminal justice agencies. This allows appropriate critical engagement with other non-statutory actors on race and criminal justice.

⁹ House of Lords, Written answers and statements, 22 October 2010 Hansard source (Citation: HL Deb, 22 October 2010, c205W)

1.5.1. The PSNI and racist incidents

[66]. The PSNI currently provides much more detailed statistical information relevant to race than any other element of the criminal justice system. The definition of ‘racist incident’ has changed since the ‘Next Stephen Lawrence?’ report – it now conforms with the Macpherson recommendation but also specifically names Irish Travellers in accordance with the NI Race Relations Order (1997).

[67]. Thus under ‘Hate Motivation Definitions’ ‘racist’, we find:

A racist incident is defined as any incident which is perceived to be racist by the victim or any other person. A racial group can be defined as a group of persons defined by reference to race, colour, nationality or ethnic or national origins (this includes UK National origins ie Scottish, English, Welsh and Irish) and references to a person’s racial group refer to any racial group into which he/she falls. Racial group includes the Irish Traveller community. (PSNI 2010)

[68]. The PSNI recording also allows us to disaggregate racist from other hates crimes as well as longitudinal analysis of patterns of recording and comparison with other hate crimes. (See, for example, Table 3.1: Incidents, Crimes and Detections with a Hate Motivation Summary 2008/09 and 2009/10)

Racist Incidents, Crimes and Detections with a Hate Motivation Summary 2008/09 and 2009/10)								
Total number of incidents		Total number of crimes		Total number of crimes detected		Detection rate (%)		
2008/09	2009/10	2008/09	2009/10	2008/09	2009/10	2008/09	2009/10	change in % pts
990	1,038	771	712 96	96	115	12.5	16.2	+3.7

[69]. This makes increases and decreases in patterns easy to follow and analyze. Thus the most recent statistics trace the following patterns:

Incidents

During 2009/10 the number of ... racist [incidents] by 48 (+4.8%).

Recorded Crimes

Between 2008/09 and 2009/10, the number of crimes with a racist motivation fell by 59 (-7.7%).

Detection Rates

During 2009/10 there were increases in the detection rates recorded for racist ... crimes. The largest percentage point increase in the detection rate [of all hate crimes] was observed for racist crimes, which increased by 3.7 percentage points from 12.5% in 2008/09 to 16.2% in 2009/10. (PSNI 2010)

[70]. The key weakness here is obviously the robustness or otherwise of the data. NICEM’s own work – as well as many other sources – suggest under-reporting to the PSNI. In other words the data may accurately trace reporting of racist incidents to the PSNI but much less accurately an indicator of levels of racist violence or, indeed, the success of the PSNI in dealing with racist violence.

- [71]. With this strong caveat in mind, however, the presentation of the data remains a good example for other elements in the criminal justice system in Northern Ireland. Within the limitations of its own performance and recording, the statistics provide a clear baseline from which it is possible to measure the delivery of a key service to the BME community across Northern Ireland. This is provided at the level of both police district and area, including an urban and rural comparison. (See Table 3.2: Racist Motivation: Incidents, Recorded Crimes and Detections by District 2008/09 and 2009/10 and Table 3.3: Racist Motivation: Incidents, Recorded Crimes and Detections by Area 2008/09 and 2009/10). This detailed information is provided on Total number of incidents Total offences recorded Total offences detected and Detection rate (%).
- [72]. This detailed approach facilitates critical engagement with the statistics from an NGO perspective – if community organisations know that there has been a particular dynamic in an area, this would expect to show up in local area statistics.
- [73]. While there has been a great deal of interest and analysis of PSNI recruitment, this has focused almost exclusively on the Catholic/Protestant differential (or more accurately on the Catholic/non-Catholic differential). This means that it is impossible to trace the representation of BME in the PSNI since these are collapsed into ‘non-Catholic’ figures. Fair Employment returns offer some indication of this – from 2008 we find Northern Ireland Policing Board, The 1,173 359 60 1,592 [76.6%] [23.4%] (ECNI 2009: 158). This may well actually impact negatively on BME recruitment and it certainly can do nothing positively to monitor representation in terms of BME recruits.

1.5.2. Section 95 of the Criminal Justice Act 1991

- [74]. The situation in England and Wales remains a key model in terms of statutory monitoring and analysis of race. See for example the list of tables and figures from the Home Office publication on race and the criminal justice system below (Ministry of Justice 2010). This gives some sense of the comprehensive nature of reporting in England and Wales and some sense of the kind of detail that would provide a comparative robust data on race and the criminal justice system in Northern Ireland.

List of tables and figures in Statistics on race and the criminal justice system
Percentage at different stages of the Criminal Justice System compared with ethnic breakdown of general population, England and Wales 2008/09
Stops and Searches (section 1 PACE and other legislation) per 1,000 population (based on PEEGs), by observed ethnicity, England and Wales 2004/05 to 2008/09
Arrests per 1,000 population (based on PEEGs), by observed ethnicity, England and Wales 2004/05 to 2008/09
Cautions per 1,000 population (based on PEEGs), by observed ethnicity, England and Wales 2004/05 to 2008/09
Prison population including foreign nationals (to nearest thousand) by self-identified ethnicity, England and Wales as at 30 June 2005 to 2009
Number of racist incidents, England and Wales 2005/06–2008/09
Number of racially or religiously aggravated offences, England and Wales 2005/06 to 2008/09
Percentage of victims who were satisfied (completely, very or fairly) with their overall contact with the CJS, by ethnic group (WAVES cases closed between April 2008 and March 2009)
Stop and Search section 1 PACE and other legislation, self-identified ethnicity, 2008/09
Stop and Search section 1 PACE and other legislation per 1,000 population, self-identified ethnicity, England and Wales 2008/09
Trends in Stop and Search section 1 PACE and other legislation, England and Wales 2004/05 – 2008/09
Stop and Search section 1 PACE and other legislation per 1,000 population, officer identified ethnicity, England and Wales 2004/05 to 2008/09
Percentage of resultant arrests for Stop and Search section 1 PACE and other legislation, self-identified ethnicity, 2008/09
Stop and Account (provisional), self-identified ethnicity, 2008/09
Arrests, self-identified ethnicity, 2008/09
Arrests per 1,000 population, self-identified ethnicity, England and Wales 2008/09
Trends in Arrests, England and Wales 2004/05 to 2008/09
Percentage of persons cautioned for notifiable offences, by observed ethnic appearance, England and Wales 2008
Trends in cautioning (for notifiable offences), by observed ethnic appearance, England and Wales 2004 to 2008

- [75]. With the partial exception of the PSNI as detailed above, there is no comparable data for Northern Ireland. In other words the key recommendation informing the approach towards research and/or emerging from research would be that

The Minister of Justice shall in each year publish such information as s/he considers expedient for the purpose of facilitating the performance of those engaged in the administration of justice in Northern Ireland to avoid discriminating against any persons on the ground of race.

- [76]. This would address and complement the aforementioned statement of principle showing how the system as a whole will address racial discrimination which has been promised but never delivered since the Criminal Justice Review. Some of this data may not be collected at present; some of it may be collected but not put in the public domain. Either way, the NICJS needs to transform its attitude towards and provision of data in line with provision in the UK.

1.5.3. Gangmasters (Licensing) Act 2004

- [77]. There is one other specific area of state activity directly relevant to race and criminal justice which has come into force over recent years. This is governed by the Gangmasters (Licensing) Act and operated by the Gangmasters Licensing Authority. While the legislation

covers people regardless of ethnicity it is often specifically connected to the experience of migrant workers and perceptions of 'trafficking' and therefore effectively inseparable from issues of race and racism. This has made specific intervention in Northern Ireland:

Many gangmasters may be breaking the law by supplying workers to farms and the food industry without a licence according to ICM research conducted on behalf of the Gangmasters Licensing Authority (GLA). The research surveyed employment agencies in Northern Ireland and found that only 63% of agencies supplying workers to the food processing & packing sector and 64% who supply workers to the farming & horticulture sector hold a GLA licence. It was also noted that the smaller agencies were more likely to be unlicensed. (GLA 2008)

- [78]. The work of the GLA will continue to provide data and legal intervention directly relevant to the nexus of race and criminal justice in Northern Ireland:

The GLA who were set up to safeguard the welfare of workers across the UK have already made their mark by revoking the licences of 76 businesses found to be exploiting workers in Scotland England and Wales. With Operation Ajax under way in Northern Ireland those operating without a licence in the regulated sectors must come forward now, rather than risk being trapped by one of our many operations and face prosecution. Since Operation Ajax was launched in Northern Ireland the GLA have conducted 18 inspections with 6 formal warnings issued. A number of operations aimed to catch unlicensed operators and those who use them will take place over the coming months. (GLA 2008)

1.6. Collating, summarising and reporting the results.

- [79]. As we have seen, the IRR indicates, minority ethnic people in the UK find themselves trebly discriminated against by the criminal justice system – in terms of *victimization*, *criminalization* and *employment*. We might suggest, a fortiori, that this triple dynamic applies, a fortiori, in Northern Ireland where the criminal justice system has been subjected to almost none of the reform to the UK system over recent years.
- [80]. We know anecdotally that this is the case. The situation in terms of criminalization may be slightly different – although sections of the minority ethnic population certainly have believed this applies in their situation – Travellers and Muslims are obvious examples. There was also the case of the Poland/Northern Ireland soccer match which threatened to redefine relations with Polish migrant workers in Northern Ireland. In general, however, it appears that relations are somewhat better than those between the BME community and the police in the UK. However, the criminal justice system in Northern Ireland needs to provide the evidence on this.
- [81]. The central conclusion in the 'Next Stephen Lawrence' report was that NI was in a 'pre-Macpherson' situation (with regard to race, if nothing else) and that the whole system needed to be reformed using the Macpherson template and without the need for any great 'Inquiry' – there was no need to reinvent the wheel on this, simply to learn positively from the reform of race and criminal justice in England and Wales. It was argued that the prima facie case for this had already been made - what the criminal justice system wasn't doing in terms of the provision of statistics on ethnicity was proof enough. This scoping study points towards the same conclusions a few years on. Of course, there are differences with England and Wales and Scotland. But these may be positive as well as negative. Responsibility for overseeing such a process might sit much more neatly here with the CJSNI given its integrated function than anywhere else. The last report was successful as an intervention in making the

arguments but there was really no obvious outcome in terms of the CJS and race - with the exception of some minor changes on policing.

- [82]. The annual Ministry of Justice publication *Statistics on race and the criminal justice system* is definitive. This publication reports statistical information on the representation of black and minority ethnic groups as suspects, offenders and victims within the criminal justice system and on employees within criminal justice agencies. The publication fulfils a statutory obligation for the Secretary of State to publish, annually, information relating to the criminal justice system with reference to avoiding discrimination on the ground of race. As the most recent report summary suggests:

This report provides details of how members of the Black and Minority Ethnic (BME) community in England and Wales are represented in our Criminal Justice System (CJS). The contents of the report will be of interest to government policy makers, the agencies that comprise the CJS, and others who want to understand better how experiences of the CJS differ between ethnic groups. It is important to note that the data presented highlight areas where there is a difference in the results between ethnic groups and where practitioners and others may wish to undertake more in-depth analysis to understand further the reasons for such differences. This should not be equated with discrimination as there are many reasons why apparent disparities may exist. (2010a: 7)

- [83]. This is indicative of a wider commitment and obligation to closely monitor ethnicity with the British criminal justice system in order to identify and prevent race discrimination. The Home Office publication *Race and the Criminal Justice System* is a fine template for a statutory overview analysis. Other publications (Ministry of Justice 2010b, 2010c) further illustrate this commitment to address racism within the criminal justice system.
- [84]. Once this data is put in the public domain, its interpretation remains a moot point. As we have seen, widely different analyses can be placed on a statistic such as the commonly agreed reality of the marked over-representation of BME people in prison or in stop and search incidents. In other words, the provision of statutory data does not close discussions on human rights and equality in the criminal justice system but it remains a necessary condition for such analysis.
- [85]. The scoping study framework we have presented in this study comprises five stages there should be an associated consultation exercise. There has already been some informal consultation with NICEM staff but it would be useful to engage with other supportive stakeholders. There should be a brief but intense period of consultation within NICEM – perhaps with a focus on what grounded evidence we have on the criminal justice system in Northern Ireland aside from policing.

1.7. Further Research

- [86]. This scoping study suggests that there is a very powerful case for further research on race and the criminal justice system. There is little evidence of new analysis emerging from the criminal justice system in Northern Ireland and a strong case for, independent NGO engagement with the question. There is also a case for a degree of rebalancing of the question of policing within the criminal justice system. While policing and race remains a crucial question, it has been subject to some research and scrutiny. There have also been significant improvements in aspects of PSNI training and practice. The PSNI have also engaged with the issues in a fairly systematic way. But this has left the remainder of the criminal justice system in Northern Ireland almost free of either self-examination or scrutiny on race.

- [87]. It is also important that the specificity of the situation in Northern Ireland is not lost sight of. While the improvements on criminal justice system across the water remain key reference points for any further intervention on criminal justice and race in Northern Ireland, it remains true that there are key differences in Northern Ireland. Most obviously the new devolved Department of Justice creates a new and potentially positive context for work on race and criminal justice. The CJINI also presents a statutory body which might allow integrated work on race across the whole criminal justice system. This kind of structural specificity to the Northern Ireland situation should not be ignored.
- [88]. There are also obvious differences in terms of the demography and experiences of criminal justice of the BME population in Northern Ireland. Most particularly the negative interface between BME and police which has so characterised the situation in England and Wales is less evident. The confrontation between the PSNI and Polish football fans (some of whom were migrant workers living in Northern Ireland) was remarkable precisely because it was so atypical. While some minority ethnic groups have had a negative dynamic with police – here Travellers and Muslims are examples – by and large the BME community in Northern Ireland has demanded more protective policing rather than less racist policing. This is, of course, a positive aspect to the debate. There is also little evidence to suggest that BME people are over-represented as perpetrators of crime within any section of the criminal justice system – although as we have stressed repeatedly, it is imperative that official statistics be made available to confirm this impression.
- [89]. Thus without pre-empting the outcomes of any further research, the key issues in terms of race and criminal justice in Northern Ireland are likely to emerge as ‘service’ and ‘recruitment’. The NICEM ‘Next Stephen Lawrence?’ provided copious evidence of poor service to BME – the report presented very clear evidence of institutional racism. It is imperative that this question is revisited in the context of NICEM’s work on harassment over the intervening period – in other words, to what extent does NICEM’s work indicate any change in the intervening five years? And does the accusation of institutional racism still hold? In terms of recruitment, while the data is unavailable, anecdotally there appears a significant under-representation of BME across the criminal justice system. In the context in which an expanding BME population – including a whole new generation of BME young people – has appeared and will be appearing in the NI job market, it is important that this situation is proactively addressed.
- [90]. There are two obvious strategies for further research. These are not contradictory but rather complementary. But they are discrete – one could take place without the other. *The first is an ‘in-house’ NICEM review of its own primary research/testimony relating to race and the criminal justice system.* While this has focuses on racist violence, there is other relevant material which speaks to issues across the whole criminal justice system. The second is a larger project – *it would involve a post-Macpherson review of race and criminal justice across the whole system.* The Scottish model outlined above provides useful template for this. As we have seen, there is not a huge amount of relevant data – this is in itself striking evidence of a problem. But existing practice can be measured against best practice in England and Wales and Scotland, allowing for the aforementioned differences with the Northern Ireland context.
- [91]. While there is a strong argument for NGOs – like NICEM - doing some of this research, ultimately the goal must be to get relevant criminal justice authorities to do it properly themselves in future. This transformation has been at the heart of what is best about good practice in England and Wales in the wake of MacPherson. In Northern Ireland, much of the problem lies in government firstly not gathering the appropriate statistics and research and secondly therefore not being properly informed about the policy options to be pursued. Governments should be doing this kind of work, and NGOs should be providing an independent critique of what they are doing, instead of doing it for them. In other words it is

important to insist that NGOs have a role to play in making sure it happens, rather than imply that NGOs do what the criminal justice system itself ought to be doing.

- [92]. In summary, the minimum action suggested is to revisit the ‘Next Stephen Lawrence?’ report in the context of recent developments. The report might be obviously updated in a range of ways – most importantly, the new empirical data from NICEM should be incorporated and used to confirm or change analysis were appropriate. The questions on racially aggravated violence should also be revisited. The more challenging action would be for NICEM to undertake a thorough-going review of race and criminal justice across the whole system in Northern Ireland.
- [93]. Finally, it bears emphasis that there has been an episode of sustained interest in Northern Ireland as the ‘race hate capital of Europe’ idea since NICEM’s *The Next Stephen Lawrence?* report. In 2009 the ‘riot’ involving Northern Ireland and Polish soccer fans followed by the ‘pogroms’ against the Roma community arguably marked a new juncture in the relationship between BME groups and the criminal justice system. In other words, this is an opportune time to re-examine the question of race and criminal justice in Northern Ireland. NICEM is uniquely well-placed to assume responsibility for this task. While the ‘Next Stephen Lawrence?’ report clearly had some impact in terms of raising issues and changing policy and practice, it did not create a context in which racist violence would be policed significantly differently. It left the remainder of the criminal justice system almost untouched. Moreover, while the analysis and recommendations are appropriate, the report achieved relatively little as an intervention – none of the recommendations appears to have had significant impact. In this context there is every justification for a radical and sustained reassessment of race and criminal justice in Northern Ireland.

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