

# Delivering Equality and Human Rights for Black and Minority Ethnic Communities:

## A Submission to the Joint Committee on Human Rights On The Commission for Equality and Human Rights

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<p>Human Rights for Race Equality</p>		

**March 2004**

***‘An independent national human rights institution is an integral part of a national protection system. Such an institution is the basis upon which one can build to translate international human rights standards at the country level. It is the voice of the weak, the vulnerable, the disenfranchised, those without hope. We all recognise that it is not a panacea. However, the Paris Principles guide us to realise how we can establish such institutions to realise common human rights aspirations.’***

*The Paris Principles: A Reflection. A Round Table on the Occasion of the 10th Anniversary of the Paris Principles, Palais Wilson, Geneva, Switzerland 10 December 2003.  
Bertrand Ramcharan Acting High Commissioner for Human Rights*

***“The decision to foreclose on the existing commissions is the easy part - the complexity will be in outlining a clear and credible structure for bringing the existing commissions together that instils confidence in those that rely on them now and others that will call on it in future.”***

*Bert Massie, Chairman of the Disability Rights Commission, October 2003*

## Introduction

1. The 1990 Trust (see appendix 1 for information about the Trust) has always worked from the premise that *racism is a violation of human rights*. We are committed to ensuring that British society truly embraces a rights based culture for the delivery of equalities. While the Human Rights Act was a great step toward this goal, problems remain in understanding, implementation and enforcement.
2. In 2001, the 1990 Trust surveyed over 200 Black<sup>1</sup> organisations, and only 37% reported having any detailed knowledge of the Human Rights Act. As a result the 1990 Trust is now implementing a programme to work in eight regions of the UK to help build knowledge of the Human Rights Act and to support a cultural change. This is so that more people are proactive in asking about their rights and what public authorities are doing to ensure equal rights.
3. Many public authorities pursue 'needs and experiences' based research to help 'them' access services. This approach is imbued with a superficiality of discovering cultural norms without the accompanying understanding of political and structural barriers to engagement. Many Black communities have 'needs analysis' fatigue and it would be preferable (in our view) to have as a starting point the question what are the rights of the people concerned here and how are these being fulfilled?
4. Hence any consideration of a body that can help with the tasks involved in cultural shift towards a rights based equality agenda of building understanding, implementation and enforcement, starts as a serious and exciting prospect. The hope vested in the addition of 'Human Rights' to the title for the Single Equalities Body was however tempered by caution. As we said in our September 2002 briefing paper 'A Vision of Equalities':

*'With great transformations, however, come not only considerable opportunities, but also considerable dangers. The urgency generated by the (European) Directives could possibly rush a process that requires clear-headed deliberation and dynamic engagement. Transparency and democratic input are necessary if the process toward a Single Equalities Act, and possibly a single equalities body, is to be inclusive and engaged in a full examination of the issues. It is critical that the discourse around the move toward these changes does not become a patina for instituting a more conservative equalities agenda that actually retreats on the gains won by difficult struggles by Black and Asian communities as well as those of women, the disabled, aged, religious, and gay and lesbian communities.*

*For this reason, among others, **we adamantly oppose any government restructuring of equalities that would eliminate an independent or separate body that specifically focuses on anti-racism.** The Commission for Racial Equality, despite serious problems and the desperate need for reforming, represents a historic advance for the UK's Black communities symbolizing the successful struggle for identity and inclusion they have waged for many decades. Thus far government proposals have failed to take into account this crucial fact and develop a model(s) that modernises as well as preserve Black victories and hard-won space*

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<sup>1</sup> We use the political term Black to include African, Asian and Caribbean communities

*... in particular, we want to stress the need to place equalities within a human rights framework.*

*Equally as important as the upward harmonization of legislation is the embodiment of a vision in a new Act that links equalities to human rights, and the goal of mainstreaming equalities for society as a whole. The 1990 Trust also supports the creation of a separate Human Rights Commission that monitors and enforces the Human Rights Act as well as promotes the creation of a human rights culture throughout the UK, one that currently does not exist.*

*We seek to promote a concept of society that is human rights based. This envisioned society addresses not only discriminations, but promotes equalities and the wide swathe of rights – political, civil, economic, social, and cultural – that should be seen as inalienable, affecting all citizens, and are mainstreamed throughout society. In this sense, the equalities agenda is part of a larger mosaic of campaigns to construct a global community where these and other rights are protected, enforced, and promoted. Many United Nations and European human rights documents provide a general point of reference on the specific nature of these rights, and are a valuable point of consultation that should be kept in mind in the process of developing new UK equalities legislation.<sup>2</sup>*

*"Groups have fought long and hard to tackle injustices to have a voice of their own. The Race Relations Act of 1976 and the development of the CRE did not come from a top down directive, but rather from the Black grass roots revolt during the 60's and 70's that demanded fairness and justice against the appalling levels of racism."*  
Lee Jasper, Equalities on the Cheap, National Black Alliance, 3/4/2003

5. We must ensure that we improve delivery on the rights and opportunities afforded to Black communities in the years ahead. Many Black people face multiple forms of discrimination – gender, sexual orientation, religion, age, and disability – that are often ignored yet are inseparable from the racism that they encounter. The 1990 Trusts shadow report to the UN Committee on the Elimination of Racial Discrimination in August 2003 contains evidence that structural inequalities in housing, education, employment, criminal justice and health still abound (see Appendix 2 for executive summary). A new configuration that does not diminish the importance of racism but raises the seriousness of these and other forms of discrimination is necessary.
6. From what we have witnessed so far as a result of the task force deliberations, we find our cautions have been magnified. The task force members themselves have raised some important questions, and we will continue to monitor what happens

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<sup>2</sup>UN documents include the Universal Declaration on Human Rights, UN Covenant on Civil and Political Rights, UN Covenant on Economic, Social, and Cultural Rights, International Convention on the Elimination of all Forms of Racial Discrimination, and Convention on the Elimination of all Forms of Discrimination Against Women among others. Relevant European documents include the European Convention on Human Rights, European Social Charter, European Convention on the Legal Status of Migrant Workers, Framework Convention for the Protection of National Minorities, European Convention on Nationality, Convention on the Participation of Foreigners in Public Life at the Local Level, and European Charter for Regional and Minority Languages among others.

as a result of the questions they posed. However, we also had concerns with the task force itself. For example we were surprised at the view that it did not matter that there were no Black representatives on the task force for issues concerning race and that the 1990 Trust asked for a place at the table but were refused (see attached article, Appendix 3, written for our website [www.blink.org.uk](http://www.blink.org.uk)). We quote from the article below:

"Dr Richard Stone, a trustee of the Runnymede Trust and a former member of the Stephen Lawrence inquiry, has said that it was 'deeply disturbing' that there were no Black or ethnic minority people specifically representing race on the DTI taskforce.

"The expertise on race equality and experience of racism needs to be there. The fact that this is lacking on the taskforce is deeply disturbing. There is a danger that race will be pushed down the agenda unless this is addressed. I fear what we might see from the government is a White Paper, not a Black Paper. I've always had very grave doubts about merging race with other areas."

'Without a full debate, inclusive of the Black community, a Commission for Racial Equality (CRE) merger would be a disaster for tackling the issues of Black Britain in the next ten years. Simon Woolley, Head of Operation Black Vote  
The Voice Jan 2003

7. In this present moment, Black communities' engagement in the debates and decisions regarding the creation of the CEHR, and the structure that offers the best opportunity of realising the goal of equality is of the utmost importance. We welcome this opportunity to communicate to the JCHR.
  
8. The following are addressed in turn reflecting the points that the JCHR asked to be considered:
  - A) The nature and extent of the new body's human rights remit and its relationship to the equality functions;
  - B) The human rights-related powers of the proposed new body;
  - C) The arrangements to guarantee its accountability and independence.

## **A The Nature And Extent Of The New Body's Human Rights Remit And Its Relationship To The Equality Functions**

*"A key principle is that a national human rights institution is constitutionally or legislatively founded and that it has as broad a mandate as possible. What are the good practices in terms of the institutions' legal structure? Have national institutions explored as much as they can what it means to have as broad a mandate as possible? Does this necessitate both the promotion **and** protection of human rights? Does it mean one must pay heed to civil and political and social, cultural and economic rights?"<sup>3</sup>*

9. The 1990 Trust questioned whether the government's decision to go ahead with plans to develop a single equality body (the Commission on Equality and Human Rights – CEHR) had been based on at least some initial thoughts about the Paris Principles of 1991 (see section C below). There was considerable concern within Black and minority ethnic communities particularly about why the Human Rights element had been added to the title. Was this a cynical and superficial attempt to pacify the human rights lobby? Or did it in fact signal a commitment to the delivery of Human rights? Our reading of the taskforce's deliberations in their final report reinforces the former. In addition, communities are concerned that under a single equalities body the race agenda will be marginalised. As the CRE explained in its discussion paper on the Single Equality Body, the most effective way to deal with avoiding different levels of protection is not to put all the bodies under one roof but rather to harmonise the legislation of equality in all areas, not just employment.<sup>4</sup>

### **Structure**

10. The JCHR in the past has supported the establishment of a separate Commission for Human Rights. The taskforce report called for six 'protected strands' covering the various equalities areas, but no specific references to what 'stranding' means in practice. It was unclear if the taskforce are recommending equality-specific departments within CEHR or all equalities areas merged together.
11. The taskforce have also suggested that the CEHR should be able to pursue human rights issues that are linked with equalities issues, concluding that it is arguable that the legislation to establish the CEHR should make provision for it to support 'combined' HRA/discrimination cases.
12. There seems to be differing views emerging within government, and the taskforce.

Angela Eagle MP has expressed doubts over whether a new single equalities body would work without one over-arching equalities law because there were too many differences between the existing laws. Last year the government quashed an attempt by the Liberal Democrats to pass a Single Equalities Bill.

Angela Eagle, a former race relations minister, said it would be better to introduce four new commissions covering religion, sexual orientation, age and human rights

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<sup>3</sup> *The Paris Principles: A Reflection A Round Table on the Occasion of the 10 th Anniversary of the Paris Principles Palais Wilson, Geneva, Switzerland 10 December 2003 Bertrand Ramcharan Acting High Commissioner for Human Rights*

<sup>4</sup> *Which way Equality – The governments proposals for implementing the EU Directive,*

- which do not currently have existing commissions - rather than get it wrong with a single body.<sup>5</sup>

13. The 1990 Trust are partners with the Greater London Action on Disabilities, Operation Black Vote and a growing number of other organisations in a coalition against the single equalities body and for a six plus one model.

**The 1990 Trust favours a 6 + 1 model.** That is

**Six equality commissions.** Keep existing Race, Gender and Disability commissions and add three new commissions for age, sexual orientation and faith)

**Plus one Human Rights** Commission dedicated to working **independently**, with **enforcement powers** and which can drive a **rights based culture for equalities** in the UK

These must be underpinned by:

A Single **Equalities Act** with proper powers of enforcement to protect all

Ringfenced levels of **resources and expertise** on all equalities issues and which must be guaranteed to all commissions.

The majority of commissioners responsible for enforcing the legislation to be **representatives** from those groups.

**Accountability** to the communities most affected by these forms of discrimination. This must happen at a **local level**.

**Training, Education and Advice** both legal and of a general nature must be available at **local centres** for all equality areas

14. The 1990 Trust believes that a separate human rights body alongside the equality commissions needs to be created. It would be essential:
- For a UK-wide body to co-ordinate the protection and promotion of human rights and ensure an appropriate degree of consistency across the UK. It should have the authority to speak on human rights for the UK as a whole, provide guidance to and review the work of the separate commissions' work on their implementation of human rights laws across the UK
  - That each Equality Commission contains a specialist human rights team and covers human rights issues relating to discrimination.
15. Cross-fertilisation in law, policy and promotional work, and such collaboration and co-operation could be facilitated by representation from the equality commissions on the Human Rights Commission
16. Collaboration could be in relation to law enforcement, where one or other of the enabling statutes provided greater opportunity to challenge the acts of public authorities, or in promotional work, where different perspectives could contribute

<sup>5</sup> *The Eagle has panned it – ex-race relations minister attacks single equalities body*, [www.blink.org.uk](http://www.blink.org.uk), 18/3/2004

to the creation of a human rights culture and a culture based on equality and respect. There are issues that properly come within the scope of both the Human Rights Act and the Race Relations Act, where a joint and complementary approach between equality commissions and a Human Rights Commission would enable maximum benefit through shared experience and expertise and shared resources. The commissions could even be based in one building – although this could potentially be a jamboree target for extreme right groups.

17. It is the Trust's opinion that there is a minimum requirement for upgrading and equalising of equalities legislation and beyond this the new areas must be assured that they have a powerful body that can enforce their rights. The CEHR in its current form cannot do this.

18. While we believe that any Human Rights Commission should have a promotional and educational remit as well as enforcement powers, the educational aspect should be driven from the basis of human rights. We have been very interested in the work of Robin Oakley who has been appointed as a consultant to the CRE to help produce a guide on good race relations. In meetings with him it is clear that he understands this point and his drafts so far of the guide reflect a great step forward in linking good relations to the realisation of human rights. It is of surprise to us that this initiative can be taking place quite separately, as it affords a real opportunity to entrench the promotional and educational aspect of equalities in the necessity for the respect of human rights.

19. The questions as to how the CEHR as per current proposals can *begin* to improve on the delivery of equalities, remain largely unanswered:

- Will proposals for a commission for equality and human rights weaken existing legal protection against unlawful racial discrimination?
- How will the proposals give sustenance to the Human Rights Act which has already been the subject of derogation via the anti terrorism legislation?
- How will it observe the other conventions in the footnote on page 3 in particular, will it uphold the right to self determination and hence the right for the people most affected to speak for themselves (ICCPR for example)
- How will the chair and members of the commission be appointed in a way that demonstrates their independence and gives representation to the various groups on the receiving end of discrimination?
- How will the CEHR be devolved into regions and not become a centralised white elephant?
- How will it be accountable to Black communities?
- How will it maintain its independence while funded through central government?
- How will rivalries and priorities between groups within a single commission be resolved?
- How will the CEHR manage the differences between the various kinds of discrimination?
- How will the turbulence caused by organisational restructuring (as seen in Northern Ireland) be addressed?
- How will the CEHR address and avoid issues of hierarchy and competition, including competition for resources?

## **B The Human Rights Related Powers Of The Proposed New Body**

20. To date there is no statutory body enforcing or promoting human rights. It would have been inconceivable not to have a CRE to promote and monitor the Race Relations Act, or an Equal Opportunities Commission to do the same for the Sex Discrimination Act. At the moment NGOs, like the 1990 Trust and many local law centres, Race Equality Councils, Citizen Advice Bureaus have been working hard trying to fill the gaps, without the capacity nor the resources to fulfil demand. The difficulties experienced in the initial implementation period of the Human Rights Act, in the absence of a Commission, further underlines the need for a central body with responsibility for human rights promotion and protection.
21. As it stands following the perusals of the task force it appears that there will be a very limited if any, remit for the enforcement of Human rights and instead it will have more of a promotion and education role. It is our view that it is pointless to have added Human Rights to the end of the title of the new body.
22. The Department for Constitutional Affairs (DeCAff) said in a statement, they hoped CEHR would only have a 'promotional remit' for human rights. The statement added: "The Government does not want the commission to become overwhelmed with individual human rights cases and believes that the existing arrangements for public access to justice under the Human Rights Act are sufficient."
23. David Lammy, a minister at the Department for Constitutional Affairs (DeCAff), has attended a key CEHR meeting and it is believed wants to tone down the enforcement powers of a new single equalities body. Lammy has responsibility for human rights, and there is a growing feeling that the government wants to avoid a raft of new legal cases taken out under human rights law which may attract criticism from the right wing press.
24. The Decaff statement is at odds with the DTI's taskforce report, which recommends strong enforcement powers and legal action on behalf of people whose human rights have been breached. Sceptics claimed the whole point of having a body called the Commission for Equality and Human Rights was to take action on breaches of human rights, and that if David Lammy disagreed he should come out openly and say the last two words from CEHR should be lopped off.
25. In the shadow UNCERD report collated by the 1990 Trust with over 25 different organisations contributing we drew attention to difficulties with some present race related legislation (see appendix 2 for executive summary of that report - full report is available on request).
26. While the Human Rights Act and the amended Race Relations Act complement and underpin each other there are still areas of these acts, which in themselves need to be strengthened. Any body / commission for Human Rights should have a remit to campaign for strengthening of these Acts and of course other equalities legislation. The new fortified general duty in the Race Relations Amendment Act 2000 (RRAA) for public authorities to eliminate unlawful racial discrimination (and promote equal opportunities and good race relations) reflects the Human Rights Act as it includes a right against discrimination (though not freestanding) in the enjoyment of ECHR rights, and is applied to all public authorities (as defined in



the Human Rights Act). The Human Rights Act also requires that public authorities act in ways that are compatible with the ECHR.

27. Some of the anomalies include Section 19 of the RRAA whereby many immigration and nationality functions<sup>6</sup> are exempted from the remit of the Race Relations Acts 1976 and 2000. Also outside the scope are:

- judicial decisions;
- decisions not to prosecute;
- functions of the Security Services
- the Houses of Parliament.

28. The European Convention on Human Rights on its own, provides limited protection from discrimination. Article 14 of the Convention provides that the enjoyment of Convention rights are to be secured without discrimination on any ground but does not guarantee a free standing right to freedom from discrimination. In addition, the Human Rights Act 1998 protects civil and political rights and is concerned solely with public functions.

29. We would also want a commission for Human rights to lend weight to and ensure the provisions of all the other major Human rights conventions (see page 3 footnote) and as of particular concern to minorities are the rights to civil and political rights as first class citizens, self determination and cultural social, economic and cultural development.

### 30. Principal Functions

30.1. **To Champion the drive for the UK to have an exemplary human rights based culture** Where public functions (outside the scope of race relations legislation) engage a Convention right, (e.g. right to liberty, fair trials, privacy) but are exercised in a discriminatory manner then they may be open to **challenge** under the Human Rights Act. This is a proper role for a Commission on Human Rights.

30.2. **To champion the rights basis** for equality issues which will remain central to a Human Rights Commission as the principle of non-discrimination in the enjoyment of Convention rights is an overarching and central theme to the Convention and it cannot be divorced from it. The grounds of discrimination contained in Article 14 of the Convention is non-exhaustive: it includes the most common grounds e.g. sex, race, colour and religion but the words 'other status' can include disability, age, sexual orientation (for which there is statutory protection in UK law) and even class or social disadvantage.

30.3. The existing powers to **monitor and criticise legislation** under the Human Rights Act requires Ministers to certify that future legislation is compatible with the Convention or to make a statement that he or she is unable so to certify but wishes nevertheless to proceed with the Bill. A Human Rights Commission will be critical in ensuring firstly, that government does not introduce legislation, which is incompatible with the Convention (including article 14); and secondly, where such legislation is

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<sup>6</sup> see appendix 2 paragraph 17

introduced that Ministers provide justification for their actions. A Human Rights Commission should also have the power to challenge possible or suggested derogations.

- 30.4.A Human rights Commission could also have a **monitoring and watchdog** function especially on Public Authorities, political parties and the media. They should be able to call for periodic Human Rights reports on progress made. Monitoring data should be publicly accessible.
- 30.5.A Commission should also enable better **implementation of other Human Rights instruments**, as well as initiating more awareness of them.
- 30.6.**Education, promotion and capacity building** in the public, private and Voluntary sector to use the 'rights' provisions to deliver equality.
- 30.7.To engage in **challenging political and philosophical** discourses on rights, for example the right to freedom of speech v. The discrimination and harm the 'freedom' may cause.

### **31. Principal powers**

- 31.1.To **conduct investigations or call for public inquiries** into situations where there are serious human rights concerns, or as a result of a complaint.
- 31.2.To bring **test case litigation**, provide representation and act as a third party intervener in human rights cases.
- 31.3.To work towards **creating local human rights centres** to afford easy access to the general public for advice on rights and entitlements. We are concerned about the future role of Race Equality Councils and local Law centres, especially because funding has been withdrawn from groups like the Northern Complainants Aid group, which had an established reputation in Black Communities for providing expert assistance on race cases. It has been suggested to us by a number of RECs that they would like more investigative powers.
- 31.4.Provide **advice and assistance** to the public on finding help to protect their rights
- 31.5.To **monitor progress on implementing** the Human Rights Act, by calling for evidence and reports and investigating where necessary
- 31.6.To **publish reports** of investigations
- 31.7.To conduct **relevant research**, for example longitudinal studies which measure improvements in the exercise of rights
- 31.8.To act as a provider of **advice, education and information** on human rights to private, public and voluntary bodies

31.9. To help **fund** organisations that can help with any aspect of the remit

31.10. To **propose legislative change**

## **32. Enforcement**

32.1. Discussions to date on the CEHR have been centred on encouraging good practice and promoting equality of opportunity, confirming the fears of many equality and human rights advocates who believe this was always the government's intention, to weaken the enforcement powers. Former CRE chairman Lord Herman Ouseley warned in October last year of his fears that the new body would be focused on soft areas like equalities promotion rather than taking on organisations who consistently discriminate. He said: "If we've got legislation that isn't capable of being enforced effectively because the body are busy doing promotional work, and are fudging their responsibilities under the law, then it won't work<sup>7</sup>."

32.2. There is a clear need for a balance between promotion and legislation. This applies to race: we need to persuade people and institutions to change, to adopt better practices, to develop more positive policies, but more importantly we need to use our law enforcement powers because ultimately, with some institutions, it is the only way to effect real change.

32.3. The "new, more unified approach to equality", advocated by the Government, is not possible without a rational and consistent Single Equality Act, dealing with all grounds of unfair discrimination in all spheres of activity.

32.4. It is also unclear about how education and promotion would in fact happen unless there is a massive injection of resources to ensure the capacity building in local areas of the UK.

32.5. Please also see under 'powers' above point 31.

*While change can be achieved through promotion, education and persuasion, some more forceful 'driver'. Promotion of good equality practice is important, but only succeeds as part of a broader approach.<sup>8</sup>*

<sup>7</sup> Enforcement of equality law 'off the agenda' in single equalities, [www.blink.org.uk](http://www.blink.org.uk), 18/2/2004

<sup>8</sup> Achieving Change: enforcement powers of the equality commissions, Discrimination Law Association, February 2004

## **C The Arrangements To Guarantee Its Accountability And Independence**

33. The establishment of a Human Rights Commission and separate equality bodies should be informed minimally by what are known as the Paris Principles.<sup>9</sup> These guidelines were formed at a 1991 UN-sponsored gathering of national human rights commissions and bodies seeking to provide minimum standards on the status and advisory role of national human rights commissions.

### Paris Principles 1991

- Independence guaranteed by statute or constitution
- Autonomy from government
- Pluralism, including in membership
- A broad mandate based on universal human rights standards
- Adequate powers of investigation
- Sufficient resources.

We would add here:

- Accountability (to communities it is supposedly helping)
- Enforcement powers (extended from existing position and resources to ensure enforcement)

### **34. Independence**

*“Independence is the cornerstone of your work. Without it national institutions lose credibility, lose confidence and, in the end will become ineffective. What does this word independence mean? Over the next two days you will check the boundaries of what it means to be independent and what it means to deal with mandates without external influence while, at the same time, winding one’s way through the labyrinth of the processes which ultimately lead to the prevention of human rights violations or, where they occur, to the provision of effective remedies. I ask you to be reflective and to ask and try to answer the hard questions. Are appointments processes appropriate? Are the financial processes which are in place guarantors of the ability to manage an institution’s own affairs? Do the institutions define their own priorities? How do they relate to an institution’s Executive, Legislature, Judiciary and Civil Society while respecting the cardinal need for independence?”<sup>10</sup>*

35. The 1990 Trust believes that the Commissions must be independent of government. Independence of the commissions would be best preserved by removing from Government full control over the appointments process, as well as

<sup>9</sup>“Paris Principles,” International Meeting of the National Institutions for the Promotion and Protection of Human Rights, Paris, 7-9 October 1991, <http://www.hrw.org/reports/2001/africa/overview/int-standards.html>.

<sup>10</sup> The Paris Principles: A Reflection A Round Table on the Occasion of the 10 th Anniversary of the Paris Principles 10 December 2003 Bertrand Ramcharan **Acting High Commissioner for Human Rights**

the financing and internal management processes of the commission. Its decisions should not be overruled apart from by a court of law. This should be established under an Act of Parliament setting out its role. We believe the establishment of the Independent Police Complaints Commission (IPCC) represents a good model of how to establish an independent commission (see <http://www.ipcc.gov.uk/>).

### **36.Accountability**

- 36.1.The Commission should report publicly on its activities and be held accountable for its results – preferably to an independent civil society body, or to a functioning and exacting parliamentary body (namely the JCHR). This is particularly important as an ineffective body that cannot address equality and human rights violations actively can act as a frustrating device, rather than a tool to promote and protect human rights.
- 36.2.It is also important that the Commissions are seen to be accountable to the public in a wider sense. This means that its workings must be open and transparent, and there must be genuine opportunity for people to participate in the working of the Commission.
- 36.3.The 1990 Trust advocates the appointments are free from political interference; appointments should be made by both Houses of Parliament on recommendation from the JCHR with expert lay input from communities affected.
- 36.4.The Commission should engage with communities through formal and informal mechanisms and a general open culture. This can be achieved through having arrangements with regional and national NGOs that have links with grassroots communities, rather as the IPCC intends to use 'gateway' organisations (such as Citizen's Advice Bureaus, the Youth Justice Board, Black Londoners Forum etc) and third party reporting centres.

### **37. Conclusion**

The litany of concerns raised regarding the single equalities body leads to several conclusions. First, the broad unity by a range of forces that a Single Equalities Act is imperative before any major equalities restructuring is to occur must be listened to by government. The voices of grassroots and community stakeholders must be taken into account, particularly the fear that for the sake of administrative convenience their rights will be compromised. Second, all options should be thoroughly examined and discussed in a process that is transparent and democratic. At present, the government has seemed to dismiss the possibilities out-of-hand of having a structure other than the single body. It is essential that models that preserve the current commissions and, at the same time, modernises the legal regime and delivery of equalities be sought or created.

There are some fundamental principles that we believe are important to note. The starting points for this all-important transformation need to include:<sup>11</sup>

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<sup>11</sup> A Vision for Equality, 1990 Trust, September 2002

- A Single Equalities Act [which] should precede a fundamental restructuring of equalities' bodies. Resolving the inconsistencies and conflicts in the current equalities policies should be addressed before constituting any new body.
- The Black community being actively and significantly involved in all the proceedings.
- Anti-racism and Equalities involves more than just a legal regime and should be seen in the context of a broader social change toward mainstreaming equalities and human rights. Equalities and human rights are two sides of the same coin and inextricably linked.
- Examination of all possible models for the enforcement and promotion of equalities laws.
- Proper resources and expertise
- Proper representation and appreciation of the right of oppressed groups to have their own spokespeople in any discussions *concerning them*.
- Adoption of the Paris Principles. (See point 33)

As we have said in the body text our preference is for an Independent Human Rights Commission with six equality commissions. We understand that this needs much further discussion and detail about the workings of such a model, but so far there is an atmosphere of blasphemy if anyone dare to speak against the CEHR in its current form.

However we sense changes in perception as some of the reality of the limitations of the proposals hit home, and we will at the Trust will continue to work for what we believe will offer the best hope for the delivery of race equality. A Human Rights Commission will be a great boon to challenging the pathology of race, and the pathologising of Black people in Britain. Today in March 2004 it is sad to witness a regression to a view of white superiority, and challenges to multiculturalism from 'respected' race advisors and academics<sup>12</sup>. Something needs to push them out of their comfort zones so they can wake up and understand racial disadvantage. Part of the reason for the appearance of such articles is because we have allowed the discourses on race in Britain to slip back to a blaming the victim mode, instead of seeing Black communities as first class citizens with equal rights. The time is right for rights.

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<sup>12</sup> Referring to recent article from David Goodhart (Guardian 24<sup>th</sup> February 2004, and re Matt Cavanagh, race advisor to David Blunkett (Guardian Saturday 20<sup>th</sup> March)

## Appendix 1

	<p><b>The 1990 Trust, Suite 12, Winchester House, 9 Cranmer Road, London, SW9 6EJ</b></p> <p><b>Tel: 020 7582 1990</b></p> <p><b>Email: <a href="mailto:blink1990@blink.org.uk">blink1990@blink.org.uk</a></b></p>	<p>The Trust believes in</p> <ul style="list-style-type: none"> <li>✓ Collective action and unity of purpose</li> <li>✓ Social justice as a guide to life</li> <li>✓ Empowerment of the people</li> <li>✓ Integrity throughout</li> </ul>
<p>Human Rights For Race Equality</p>	<p>Website <a href="http://www.blink.org.uk">www.blink.org.uk</a></p>	<p>For</p> <ul style="list-style-type: none"> <li>✓ The elimination of racial discrimination, the realisation of human rights for all</li> </ul>

**“One very dominant theme which emerged was the credibility and competence of the 1990 Trust to make a major contribution to the development of human rights policy and practice.”**

**“It’s absolutely crucial for there to be a national Black organisation with a human rights agenda - if the 1990 Trust didn’t exist they would have to be invented.”**

**“Simultaneous engagement with the grassroots and with elite processes of policy formulation is almost universally seen as the basis of the unique relevance and power of the 1990 Trust in challenging racism and promoting equity.”**

(Quotes from the 2001 Strategic Review of the 1990 Trust conducted by external consultants)

### **Strategic Objectives**

1. To establish and influence the practical implementation of the principle that ‘Racism is a violation of human rights’ for example via the monitoring and analysis of public policy and parliamentary legislation to assess the implications for and effects on the quality of life of Black communities and to keep Black communities informed of progress on these initiatives;
2. To establish an international reputation for excellence and innovation, as an exemplar organisation demonstrating the benefits of African, Caribbean and Asian communities working collectively in tackling racism;
3. To develop self organisation and community leadership to empower Black communities in tackling racism and in reaching their full potential;
4. To develop the Trusts ICT services and functions to support, enable and sometimes lead on the achievement of Trust objectives. For example via the development of our website [www.blink.org.uk](http://www.blink.org.uk)

### **Examples of recent work**

- Research on funding levels to the Black Voluntary sector and their role in civic engagement and social inclusion (Funded by the Joseph Rowntree Foundation)
- Work to enable the best results for Black communities from the World Conference Against Racism in South Africa in September 2001
- Development of the Race and Human Rights consortium and the production of a shadow report to the UN Committee for the Elimination of Racial Discrimination in August 2003
- National conferences on Race Legislation and Policy, Managing Diversity and Human Rights, Education, Youth work and the Connexions service

- Work to voice Black groups opinions on the Commission for Equalities and Human Rights (CEHR)
- Development of a Coalition to challenge the legislation and policy regarding Asylum seekers
- Investigation of the reasons for low complaint rates re Stop and Search for the MPA
- Working to ensure that Black communities are sufficiently informed to make best use of the Race Relations (Amendment) Act (2000), the Human Rights Act (1998) and other race legislation and policy
- Work with University of Warwick (Centre for Race and Ethnic Relations) to evaluate Home Office Connecting Communities Programme
- Independent report of the Stephen Lawrence Inquiry (“A Culture of Denial”)
- Training for Public Authorities on the Race Relations (Amendment) Act and the writing, development and implementation of the Race Equality Schemes that the Act requires.

## **SERVICES PROVIDED**

### **Training and consultancy**

Experienced Trainers and facilitators can provide training and consultancy services on a wide range of race related issues. Examples include:

- Capacity building in Black communities, particularly for women and youth;
- Managing Ethnic Diversity;
- Race Equality Management;
- Human Rights and Black Communities;
- Best Value and Race;
- Race and cultural awareness;
- Race, legislation and policy.

### **Research and Policy Development**

Drawing on a pool of experienced researchers and writers the Trust can help with identifying and actioning research and policy work. We have a Race Research Network with select universities and other NGOs.

### **Information Technology**

#### **Black Information Link: <http://www.blink.org.uk>**

Created and managed by The 1990 Trust, the BLINK website has been described by Google as UK's "premier website for ethnic minority communities." A truly inter-active community driven site, BLINK campaigns on issues, such as, racism, discrimination, human rights, education, e-democracy and social and political justice. BLINK has, on average, over 300,000 page hits per month. In 1998, BLINK won the Networker of the Year Award from GreenNet.

#### **Healthweb: <http://healthweb.blink.org.uk>**

Provides multi-lingual information on health issues concerning Black and Minority Ethnic communities. The site has information and sources on alternative health practices.

#### **Black to Black Magazine**

This is the quarterly newsletter of the 1990 Trust and has a database of 3,500 organisations. It offers a unique platform to highlight issues not normally covered by mainstream media. We welcome articles and advertising.

#### **Conferences, Consultation and Meetings**

We can offer direct or mediated help with community interaction, drawing on our experience, contacts and ethical guidelines for community consultation.



## Appendix 2

*Executive Summary of the Joint submission by NGOs, collated and led by the 1990 Trust, to the UN Committee for the Elimination of all forms of Racial Discrimination (CERD) with regard to the UK Government's Sixteenth Periodic review.*

### EXECUTIVE SUMMARY

The years since the last UK report to CERD have seen a new Race Relations (Amendment) Act 2000 (RRAA) which strengthened and extended the race relations laws in the UK. These new duties for public authorities to eliminate race discrimination, to promote equality of opportunity and good race relations under the RRAA took effect in 2001. They represent a significant step in the struggle to counter discrimination at every level. They entail all public authorities adopting policies and procedures in order to avoid discrimination and to actively promote equality of opportunity. It will be important, in the coming years, to ensure that these measures are not allowed to become purely procedural, and that they are clearly linked to outcomes. Additionally, the extension of these duties to the private sector would greatly increase their impact. At present, it is too early to measure the success of these provisions.

During the year, there have been some key threads that have run through the 'race agenda'. The first has been the continuing **aftermath of September 11th** and the consequent increase of anti-Muslim feeling, 'Islamophobia', shown as hostility towards and attacks on Muslims. This can often be a form of race discrimination, loosely masked as religious discrimination. Unfortunately, whilst the Race Relations Act 1976 (RRA) provides protection against race discrimination it does not provide protection from religious discrimination. Consequently those who are discriminated against because they are Muslims may have no protection against discrimination. The aftershocks generated by September 11th have been exacerbated by the ripple effect of the political problems in the Middle East and the build up to war in Iraq. The year of 2002 has seen attacks on both Muslim and Jewish communities. The implementation of the Employment Directive in the UK means that there will be protection from discrimination on grounds of religion or belief in the field of employment after December 2003. However, this will still leave substantial areas relating to goods and services without protection on these grounds.

The second thread is an increasing antagonism directed at **asylum seekers**. This has been exacerbated by the Government's policy of dispersing asylum seekers around the UK as well as the Home Secretary's characterising them as 'flooding' the UK. The media have been quick to pick up and build on this characterisation of immigrants as 'flooding' the UK, as well as the suggestion that terrorists are entering the UK under the guise of seeking asylum. The Rev Arlington Trotman, Secretary of the Churches Commission for Racial Justice, commented that 'racism flourishes when politicians talk of 'swamping' and 'being tough' on asylum seekers'<sup>2</sup>. These negative images of asylum seekers have also been exacerbated by the repeated diverse attempts by the Government to restrict their rights and contain them within limited areas separate from the rest of the population.

The third thread has been the **electoral success of the far-right British National Party (BNP)** in recent local council elections. Although these gains were slight in proportion to the gains made by the far-right elsewhere in Europe, they represent a disturbing trend within the UK political scene.

In addition the Census results from 2001 are beginning to emerge and this changing demographical and social map should inform the delivery of services and policy on race.

These key threads are not separate but constantly interact with each other according to the current political climate. Greater research and monitoring, by the Government as well as NGOs, has enabled more sophisticated analysis to be done which has highlighted the differential achievement rates for different racial groups, so that sweeping generalisations are now less appropriate. Full recommendations from the NGO report are listed at section II, however we draw particular attention to the following:

**Paragraph 10:** We are particularly disappointed that the Government continues to refuse to make a declaration under ICERD Article 14. These rights of individual petition would provide an important enforcement mechanism.

**Paragraph 11:** Adequate mechanisms to ensure that a balance between freedom of expression and the dissemination of racist ideas is needed. The Government recognises the negative impact of racism in our society and has backed this up with anti-discrimination legislation and considerable resources but disappointing that these gains are constantly undermined by the negative impact created by the asylum and immigration debate with its focus on keeping asylum seekers and potential immigrants out.

**Paragraph 12:** The law tackling race discrimination in the UK is the Race Relations Act 1976 (RRA) as amended by various subsequent Acts including the Race Relations (Amendment) Act 2000. These Acts do not make up a comprehensive code; the law is complex, convoluted, inaccessible and inconsistent with the other main discrimination acts. A new Equality Act is needed to provide comprehensive provision.

**Paragraph 13:** We are particularly concerned that 'stops and searches' by the police continue to affect Black and Minority Ethnic communities disproportionately. It will be important to consider retraining and disciplinary action of police officers where appropriate. In addition we comment on the need to act to curb the upward trend of racial attacks, which is particularly pronounced in the case of asylum seekers.

**Paragraph 14:** Human rights organisations remain concerned about the failure to prosecute for deaths in custody and the failure to do so successfully. Families need to have much more information and involvement throughout inquiries into deaths in custody

**Paragraph 15:** The passing of the Nationality, Immigration and Asylum Act 2002 has caused considerable concern as the Act has increased the focus on segregating asylum seekers, restricting their procedural rights and reducing their access to basic necessities. Dispersal policy implies that asylum seekers must be kept separate from the rest of the population and it has contributed to the encouragement of racist attitudes. Antagonism towards asylum seekers has helped sustain a surge in support for the far-right British National Party (BNP) which has been significantly more successful in some local council elections during 2002 and 2003. Policies regarding dissemination of racist ideas play an important role in the prevention of racism. The UK government needs to act further to prevent speech that incites racial discrimination.

**Paragraph 16:** Asylum seekers who do not file asylum applications "as soon as reasonably practicable" after entering the UK are not eligible for support while their claims are considered. The Refugee Council of Britain has expressed concern that the law is vague and open to arbitrary application.<sup>3</sup> A recent report by Oxfam and the Refugee Council surveyed 40 support organisations for asylum seekers. It concluded that poverty was preventing access to services. Fundamental problems with the administrative efficiency and, in particular, the accessibility of NASS continue to present huge challenges to local clients and asylum advisers.<sup>4</sup> There needs to be a return to a system of full welfare benefits and at the very least the decentralisation of NASS.

**Paragraph 17:** There is a need to improve the quality, as well as the quantity, of initial decision making on asylum applications. Further, requiring a refused asylum seeker to exercise the right of appeal once returned to the country of origin rather than in the UK is an effective denial of the statutory right of appeal and should be ended. The Government should repeal section 19D of the RRAA which makes it lawful for immigration officers to discriminate on grounds of nationality or ethnic or national origin.

**Paragraph 18:** Figures from the Romani Institute show that between a quarter and a third of Britain's nomadic Romani population is officially homeless - living often without access to adequate schooling, sanitation or healthcare.<sup>5</sup> In all areas of public services there needs to be careful attention paid to the specific needs of Romani/Traveller children. This is especially true for example in the provision of health care and the keeping of health records and in Education.

**Paragraph 19:** We are concerned at the continuing disparities in employment rates in Black and Minority Ethnic communities and recommend that the government promotes and signs up to the UN Global compact for corporate organisations which seeks to encourage ethical and non discriminatory practice. In addition public sector organisations should be subject to detailed and focused scrutiny re compliance with statutory requirements.

**Paragraph 20** The continuing under achievement by certain ethnic groups in particular geographical areas remains a concern. We are also concerned to ensure that the National curriculum prepares students for life in multicultural Britain and that any review of the curriculum should include extensive consultation with Black communities.

Several recommendations are made concerning housing. The availability of adequate, affordable, appropriate and safe housing is critical particularly to issues of integration and non discrimination, health and education. With regards to health issues recent research undertaken by the CRE indicates that many of the Strategic Health Authorities had not yet managed to translate the promotion of racial equality into sustained mainstream practice. The statistical evidence in the area of mental health shows that Black and African -Caribbean people are over represented as users of mental health services and they experience poorer outcomes. In these areas and concerning the double discrimination that Black people with AIDS suffer we wish to work more closely with the government on redress.

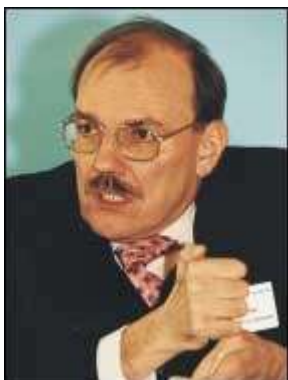
In the areas of political representation and public office we would like to see more initiatives to tackle under representation such as the development of highly successful shadowing schemes.

**Paragraph 25** Finally, we call for Protocol 12 to the ECHR to be incorporated in the Human rights Act 1998 and to allow individual rights of petition.

A complete copy of the report can be obtained by visiting: <http://www.blink.org.uk/docs/cerd300603.pdf>

### Appendix 3 Article from [www.blink.org.uk](http://www.blink.org.uk)

MOVES TO create a single equalities body have been branded a 'whitewash' after a government committee sidelined race equality in a report



Bert Massie: congratulated on his leadership

Campaigners expressed disappointment at the 'colour-blind' report of a government-appointed taskforce working on the proposed Commission for Equality and Human Rights (CEHR).

Positive sections referring to Scotland, Wales and disabilities were welcomed, but questions were being asked why race was invisible.

In October the Department for Trade and Industry (DTI) announced that their hand-picked taskforce, chaired by trade minister Jacqui Smith, would meet for 12 months.

But activists have expressed surprise that a final report has been produced after just six months, with the taskforce having only met six times.

Concern over the marginalising of race was raised at a meeting on CEHR at Southwark Cathedral yesterday, organised by the Runnymede Trust.

Questions about the colourblind nature of the taskforce report were put to the 'race' representatives, who were all white. The DTI had invited race representatives from the Runnymede Trust and the CRE. However one well-placed source, who did not want to be named, told Blink: "If the CRE and Runnymede cannot come up with one Black delegate between then we are in a very sorry state indeed."

The taskforce's report, being ratified today at their final meeting, will now be passed to the DTI who will draw up a White Paper, expected in late May, for a law giving birth to the CEHR. A Bill could then be introduced to Parliament in November.

The taskforce report called for six 'protected strands' covering the various equalities areas, but no specific references to what 'stranding' means in practice. It was unclear if the taskforce were recommending equality-specific departments within CEHR or all equalities areas merged together.

#### History

The 24-page final report of the taskforce, which Blink received yesterday, makes 17 references to 'disabled' or 'disabilities', ten mentions for 'Scotland and Wales', but just three for 'race' and 'racial'.



Bishop Joe Aldred: Black people not consulted

Referring to a minimum quota of disabled people on the CEHR board the report noted: 'the particular history and development of the disability rights movement, disabled people were unlikely to have confidence in the CEHR unless disabled people themselves participated on the Board.'

Karen Chouhan, chief executive of The 1990 Trust, said she was pleased that representatives who were vocal on the taskforce had some of their concerns reflected in the report.

But she added: "The complete colour-blind nature of the document backs up what we've feared since the taskforce was set up last November. We said right from the start there was an important principle of Black people speaking for ourselves. The report looks like a whitewash, literally.

"We welcome wholeheartedly the specific references made to disabilities and other areas, and I wish to applaud the representatives battling for recognition for extremely important subjects.

#### **Decision-Making**

The disabilities case was led in the taskforce by Bert Massie, chairman of the Disability Rights Commission (DRC), who was vocal in raising issues on the taskforce.

The report found "there was a good deal of understanding among taskforce members of the concerns of disability organisations about the establishment of the CEHR.

"There was more limited consensus on the proposals for a Disability Committee with delegated decision-making powers, to roll forward the provisions for ensuring disabled people make up at least 50% of any decision-making body, as is currently the case with the DRC."

Bishop Joe Aldred from the Free Churches Group said Black communities had not been properly consulted about plans to scrap the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the gender-specific Equal Opportunities Commission (EoC) in favour of merging them with sexual orientation, age, human rights and religion.

Speaking at the Runnymede meeting, he said: "I struggle to recall any Black person expressing agreement over this. Now I find myself here today faced with something that is *fait au compli* even though in the end it will be said that we were part of the process. I feel very uncomfortable today validating this process."

#### **Inevitable**

Judy Richards from the South East Race Equality Network said her experience of local councils was that whenever race was merged with other equalities subjects, race fell down the pecking order.

"Having seen this happen in local government people are saying they've got nothing. At least we've got the CRE to turn to. They do not feel a single equalities body will understand what they, as Black people, are going through.

"Nothing is inevitable. I'm fed up being told things are inevitable, that there's nothing we can do. The CRE might be a mess, but it's our mess."

Simon Woolley of Operation Black Vote, who was also at the meeting, said that if confidence in the process was going to be restored "there needs to be the good grace to say there are areas that could have been done better."

He said: "These issues are at the heart of people's frustrations and anxieties. They feel the process was flawed from the start." But taskforce member Mohammed Aziz responded that the government had received 'overwhelming support' for the CEHR proposals.

The taskforce's report, being ratified today at their final meeting, will now be passed to the DTI who will draw up a White Paper, expected in late May, for a law giving birth to the CEHR. A Bill could then be introduced to Parliament in November.

The taskforce report called for six 'protected strands' covering the various equalities areas, but no specific references to what 'stranding' means in practice. It was unclear if the taskforce were recommending equality-specific departments within CEHR or all equalities areas merged together.

However the report did call for 'effective enforcement tools' including investigations and compliance notices against organisations which discriminate, and the ability to take legal action in the form of a Judicial Review.

CRE chairman Trevor Phillips told the Runnymede meeting: "Our position is it could be a great improvement on what we've got at the moment. It could also be a dreadful trap. The question for me is how do we get the first and avoid the second."

He added: "Of course we want to ensure that the new commission is representative. If it doesn't happen then we're not for it. I won't cut my throat if it doesn't happen but we need to work to make it happen."

He felt strongly that the network of local Race Equality Council's needed to be retained in some form. "We're talking steps to defend it. If it doesn't happen then we're not for it."

Phillips claimed the colour of someone's skin was not relevant to whether they represented an equalities area on a committee. He said: "It doesn't matter whether the CEHR is full of Eskimos, the question is 'does it have the powers to enforce the law.'"

However Phillips warned that different equalities lobbies needed to increase communication with each other, otherwise "we'll disappear up a blind alley and we'll all be at each others' throats in six months."

"The Department for Constitutional Affairs (DeCAff) said in a statement they hoped CEHR would only have a 'promotional remit' for human rights. The statement added: "The Government does not want the commission to become overwhelmed with individual human rights cases and believes that the existing arrangements for public access to justice under the Human Rights Act are sufficient."

The DeCAff statement is at odds with the DTI's taskforce report, which recommends strong enforcement powers and legal action on behalf of people whose human rights have been breached. Sceptics claimed the whole point of having a body called the Commission for Equality and Human Rights was to take action on breaches of human rights, and that if David Lammy disagreed he should come out openly and say the last two words from CEHR should be lopped off.