

CERS: UNIVERSITY OF LEEDS

# TOLERACE: Work package 1

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National/Regional Public Policies and  
Discourses on Integration and Anti-Racism

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National/regional public policies and discourses on integration and anti-racism: Equality and Human Rights Commission (EHRC)

### **Description and Historicity of the Institution:**

*“We have a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the seven "protected" grounds - age, disability, gender, race, religion and belief, sexual orientation and gender reassignment”<sup>1</sup>*

The Equality and Human Rights Commission (EHRC) was set up following the 2006 Equalities Act and launched on 1 October 2007.<sup>2</sup> The EHRC is a non-departmental public body operating in England, Scotland and Wales and is responsible for improving and developing policy surrounding equality and discrimination. The commission is responsible for:

- ensuring people are aware of their rights and how to use them
- working with employers, service providers and organisations to help them develop best practice
- working with policymakers, lawyers and the Government to make sure that social policy and the law promote equality and
- using powers to enforce the laws that are already in place.<sup>3</sup>

The EHRC replaced the three previous commissions which individually dealt with race, gender and disability; these were the Commission for Racial Equality (CRE), the Equal Opportunities Commission (EOC) and the Disability Rights Commission (DRC).<sup>4</sup> As such,

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<sup>1</sup>See EHRC, ‘Who Are We and What We Do’

[http://www.equalityhumanrights.com/uploaded\\_files/who\\_we\\_are.pdf](http://www.equalityhumanrights.com/uploaded_files/who_we_are.pdf)

<sup>2</sup>The Equality Act 2010 which will come into force from Oct 2010, is an Act of the UK and will perform the Labour Partys manifesto duty as highlighted in the 2005 General election. The main objective of the Act is to simplify previous anti-discrimination law in the United Kingdom which consisted of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and three major statutory commissions protecting discrimination in employment on grounds of religion or belief, sexual orientation and age. The Equality Act emulates the provisions of US Civil Rights Act 1964 and four major EU Equal Treatment Directives. It aims to provide a ‘modern, single legal framework with clear, streamlined law that will be more effective at tackling disadvantage and discrimination’

See <http://www.equalityhumanrights.com/legal-and-policy/equality-act/>

<sup>3</sup> See EHRC, ‘Who Are We and What We Do’

[http://www.equalityhumanrights.com/uploaded\\_files/who\\_we\\_are.pdf](http://www.equalityhumanrights.com/uploaded_files/who_we_are.pdf)

<sup>4</sup> The Commission for Racial Equality (CRE) covered discrimination on the grounds of colour, race, nationality, or ethnic or national origins under the provisions of the *Race Relations Act 1976*, The Equal Opportunities Commission (EOC) had various powers which covered discrimination on the grounds of sex under the *Sex Discrimination Act 1975* and the *Equal Pay Act 1970*, and The Disability Rights Commission (DRC) covered discrimination on the grounds of disability under the *Disability Rights Commission Act 1999* and the *Disability Discrimination Act 1995*. Before the 1999 Act there was a statutory National Disability Council which had powers to advise the Government but not to

the EHRC acts as one body to tackle multiple discriminations and aims to represent all vulnerable groups discriminated against:

*“As a single Commission we can act as one source of information and advice and tackle discrimination on multiple levels (many people face more than one type of discrimination). We bring together the work of the three previous equality commissions and we also have new responsibilities. This means we can provide previously under-represented groups, such as older people, with a powerful body to tackle discrimination” (EHRC)*

As well as protecting race, gender (including gender reassignment) and disability equality, the EHRC is also responsible for sexual orientation, age and religion and belief. With the added component of human rights legislation the EHRC assures the basic rights and freedoms for everyone within a variety of social contexts including:

- Work
- Education and Training
- Health and Social Care, Transport or Housing
- Commercial services, for example, shops and leisure centres or
- Official Institutions.<sup>5</sup>

The EHRC is able to intervene in three key areas, which include in the law, in shaping public policy and ensuring the promotion of good practice. The commission is able to inaugurate legal cases and process legal action on behalf of individuals who have been discriminated against and where the Human Rights Act has been contravened. In addition to this the EHRC also provides funding and resources to organisations that offer legal advice to civil society and ensures that legal authorities conduct their legal responsibilities in challenging discrimination and promoting equality. The commission has the power to initiate official inquiries and formal investigations in instances where good practice has been breached.<sup>6</sup>

The EHRC works to influence and inform the Government and political sector to establish and improve human rights legislation, as such the commission aims to ensure that social policy takes into account, and focuses upon, the significance of equality and human rights through the publication and dissemination of research within the area. The commission will also produce a report to be presented to Parliament every three years evaluating the progress of equality in Britain. The EHRC works with the private, public and third sector

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assist individuals in legal proceedings (See Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005) pp7.

<sup>5</sup> See EHRC, ‘Who Are We and What We Do’

[http://www.equalityhumanrights.com/uploaded\\_files/who\\_we\\_are.pdf](http://www.equalityhumanrights.com/uploaded_files/who_we_are.pdf)

<sup>6</sup> *ibid.*

organisations and employers to minimise the levels of discrimination and improve practice to ensure equal opportunities for all, as well as assisting other organisations through a grants programme which provides financial support for both local and national projects that push for equality and human rights in British society.<sup>7</sup>

*“We aim to help Britain develop in a way that values the ideals that most of us hold dear – **respect, freedom, equality, dignity and fairness**”<sup>8</sup>*

The following section will analyse the strategic plan of the Equalities and Human Rights Commission 2009-2012 and explore how the discourse positions itself within the current political and social landscape. Furthermore we will focus our discussion upon the impact this discourse has upon ethnically marked communities across Britain.

### **Presentation and Analysis of the Strategic Plan of the Equality and Human Rights Commission 2009–2012:**

*“The UK legislative landscape for equalities has become increasingly complex and divergent and, with the addition of ‘new’ equality strands in recent years, arguably competitive” (Parken 80: 2010).*

This section will explore the strategic plan of the Equality and Human Rights Commission 2009-2012 within the context of the current climate. We will be concerned chiefly with analysis surrounding the construction of the key social/political problem and target populations with an emphasis upon specific categories which include those of ethnicity, racism and ethnic minority-national majority relations.

The strategic plan of the EHRC sets out to show how through various programmes and projects the commission will aim to make Britain a fairer place for all:

*“...at the heart of our mission, our integrated mandate means that we will act across all the areas for which we are responsible, promoting fairness through structural change that benefits the 60 million people in Britain. We will always be ready to tackle the specific issues of discrimination, inequality and human rights failings that matter to each of the protected groups we are concerned with”<sup>9</sup>*

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<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> See EHRC, ‘Strategic plan of the Equality and Human Rights Commission 2009–2012’, pp3 [http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

Particularly the plan explains how it supports the implementation of the Single Equalities Act in achieving equality throughout society. In addition to this the document maps out how it will differ and progress from the previous bodies of the CRE, the DRC and the EOC. The 5 main strategic priorities at the core of the plan are as follows:

- 1: Secure and implement an effective legislative and regulatory framework for equality and human rights
- 2: Create a fairer Britain, with equal life chances and access to services for all
- 3: Build a society without prejudice, promote good relations and foster a vibrant equality and human rights culture
- 4: Promote understanding and awareness of rights and duties – deliver timely and accurate advice and guidance to individuals and employers
- 5: Build an authoritative and responsive organisation.<sup>10</sup>

Throughout the strategic plan we are able to identify that the main social/political concern is the notion that the previous single identity group bodies are no longer relevant or made little impact compared to what the EHRC can achieve, that is with a ‘bigger voice’ which covers all forms of discrimination across all the different equality strands with the added component of human rights, the EHRC has more strength and power to influence the government:

*“I think we’ve gone as far as we can with the single identity group. We need to bring others along with us. If we create a bigger voice, the Government is going to respond to it”<sup>11</sup>*

The main theme then emerging from the document is a focus upon the idea that the EHRC is more effective than single-issue bodies, throughout this report we will elaborate upon the implications of the various proposals set out in the EHRCs’ strategic plan and their support for the Single Equalities Act and human rights advocacy.<sup>12</sup> Furthermore we will explore what this discourse tells us about the shifting debates in wider society against the backdrop of the

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<sup>10</sup> See EHRC, ‘Strategic plan of the Equality and Human Rights Commission 2009–2012’, pp5  
[http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

<sup>11</sup> Baroness Jane Campbell Commissioner, Equality and Human Rights Commission, See EHRC, ‘Strategic plan of the Equality and Human Rights Commission 2009–2012’, pp9  
[http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

<sup>12</sup> This is not to dismiss the other issues in the plan, however this is the most prominent/hegemonic theme throughout so we want to focus our attention mainly upon this aspect for purposes of the critique.

growing hegemony of a 'post-racial' liberal discourse subscribed to by western plutocracies throughout Europe (and America).

The strategic plan consistently articulates throughout how the EHRC is unique, innovative, stronger and more progressive than its predecessor bodies:

*“For the first time, a statutory body has the responsibility to protect, enforce and promote equality across the seven ‘protected’ grounds-age, disability, gender, race, religion and belief, sexual orientation and gender reassignment”<sup>13</sup>*

This sentiment is emphasized throughout the document, with a focus on fairness for everyone and the need to create greater equality through the seven strands of discrimination identified by the body. With the merging of all the different equality strands into 'one', alongside the protection of human rights, the EHRC states the following:

*“Our evidence shows that there are often common roots of inequality and that with a joined-up approach across our mandate we can achieve real, systematic change. By working together with a wide range of groups our voice and the voices of those we speak for will be amplified”<sup>14</sup>*

Here again we are able to see the focus upon this joined-up approach as being the most effective in developing a stronger voice, however as we will go onto argue, this poses a number of implications particularly for tackling racism which remains deeply embedded throughout the structures and institutions of society. The rationale for adopting this joined-up approach is to establish a sense of consistency and uniformity across all groups:

*“The benefits of creating one equality and human rights organisation are that our approach is consistent across the different areas of our remit. We will continue to make a tangible difference to the public who fund our work”<sup>15</sup>*

Previous anti-discrimination legislation had been widely criticised for being outdated, fragmented and inadequate and was reformed under the Blair Labour Government (1997)<sup>16</sup>

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<sup>13</sup> See EHRC, 'Strategic plan of the Equality and Human Rights Commission 2009–2012', pp3 [http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

<sup>14</sup> See EHRC, 'Strategic plan of the Equality and Human Rights Commission 2009–2012', pp12 [http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

<sup>15</sup> See EHRC, 'Strategic plan of the Equality and Human Rights Commission 2009–2012', pp20 [http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

with the development of the EHRC and the implementation of Single Equalities Act which aims to establish ‘harmonisation, simplification, and modernisation of equality law.’<sup>17</sup> However, we want to discuss why this discourse advocating the amalgamation of disadvantaged groups is problematic and not so radically different or stronger than its predecessors.

The notion that discrimination experienced by disadvantaged groups can simply be ‘joined-up’ as a more effective solution for establishing greater equality throughout society is extremely limited. The strategic plan celebrates this approach however fails to take into account the shortcomings and implications of a single body working to protect all vulnerable groups:

*“Over the last few years there has been a slow creep to the systematic dismantling of BME infrastructure at all levels. This has had an impact locally through the commissioning out of BME infrastructure bodies in favour of single provider organisations, as well as the development of single provider bodies at a regional level. This means that there is no independent BME voice”<sup>18</sup>*

The implications of this shift towards single provider bodies for the representation of ethnically marked communities suffering racial discrimination are significant and go hand in hand with the current hegemonic ‘post-racial’ discourse prevalent throughout the west which signals an end of racism or denies its existence as David Goldberg (2010) describes:

*“Structurally, postraciality is about new markets and the new identities to support them emanating from but exceeding any traditional mode or expression of raciality. It is a raciality that in its enigmatic drive to exceed the bounds and bonds of race, to multiply or proliferate the inputs, does so through denial. A denial not just of historical conditions but of the contemporary constraints—the legacy of racially driven inequalities—structured by those historical conditions reproduced across time. The postracial buries, alive, those very conditions that are the grounds of its own making” (Goldberg 2009, 2010).*

The implementation of a single body of representation thus dissolves, denies and negates the exceptional nature of racism, and as Judith Squires (2009) asserts, “promoting equality with respect to one equality strand may therefore conflict with, or even erode, the equality of

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<sup>16</sup> See Hepple, B (2010) ‘The new single equality act in Britain’ *The Equalities Rights Review*, Vol. 5, pp13.

<sup>17</sup> See Hepple, B (2010) ‘The new single equality act in Britain’ *The Equalities Rights Review*, Vol. 5, pp14.

<sup>18</sup> See Chouhan, K et. al (2010) ‘The Price of Inequality, The Black Manifesto 2010’, pp17.

another (Squires 2009: 505). It is clear to see then how racism can be easily pushed aside and the violent histories and advances made by the civil rights movement have been weakened and depoliticised to the extent that anti-racist struggles are simply transformed into human rights abuses, as such the experiences of ethnically marked communities become increasingly reduced, as Naser Meer (2010) points out:

*“Since the Human Rights Act promotes a more individualistic approach, which considers the majority of people in need of protection from some form of discrimination, it perhaps risks de-emphasising specific experiences of historically disadvantaged minority groups. The implication for policy making purposes is that uniform rights for individual citizens could take precedence over recognising the situation of diverse and disadvantaged groups in society (Modood, 2007). In so doing, this may facilitate a shift from a group-based approach to a focus on individual rights. While such a move might assist the principled operation of human rights legislation in promoting, for example, the right to religious freedom, it may be less sensitive to promoting specific anti-discrimination measures” (Meer 204: 2010)*

This denial of the significance of racism and its unique trajectory feeds into the contemporary ‘post-racial’, liberal logic which attempts to mask, hide and dismiss the prominence of racism which is constructed as a thing of the past, no longer important or relevant. The relationship between race and power and how racism operates structurally throughout society is instead overshadowed by a cloud of (neo-) liberalism which suppresses race to the extent that European societies are able to state that they are not racist, as Alana Lentin (2008) points out:

*“The silence about race in Europe allows European states to declare themselves non-racist, or even anti-racist, while at the same time continuing to imply an inherent European superiority, which determines both international relationships and relationships with those seen as ‘in but not of Europe’ within its domestic spheres” (Lentin 1: 2008).*

As such the distinctions between racist-non-racist, sexist-non-sexist, homophobic-non-homophobic and so on become increasingly blurred and confused. The EHRC and their support for the Single Equalities Act clearly partake in reinforcing the ‘post-racial’ liberal discourse in which different intersections are treated as ‘one’ thus the differences between ethnically marked populations, disabled populations, transgender populations, elderly populations and so on become equivalent and mainstreamed, as Squires suggests:

*“The claim that a single equality body, coupled with the simplification and strengthening of equality laws will better enable the British government to address multiple inequality considerations has been deployed by its advocates to counter concerns of critical equality professionals committed to a prior group-discrimination discourse and concerned about the potential loss of expertise and resources. It is too soon to tell whether the potential gains in terms of simplicity, uniformity and sensitivity to cumulative and combined discrimination will outweigh the potential losses in terms of single-strand expertise and access, but the debate as to whether this is likely has already begun” (Squires 2009: 502-503).*

The danger then is that this simplification of equality laws and the joining up of the distinct equality strands enables Britain to construct itself as a progressive, ‘post-racial’ liberal society, thus racism becomes invisible and is instead understood as a human rights issue. That is the bringing together of all groups and dispensing with single issue bodies such as the CRE, sustains and strengthens the notion that ‘we are all the same’ and as such reinforces the discourse of colour blindness, universalism and unification which masks the persistence of structural inequalities that remain embedded within contemporary Britain. For example within the strategic plan it is quoted that, “racism appears to be less prevalent among younger generations, though it is far from absent.”<sup>19</sup> Here we are able to see the growing denial and dismissal of the extent to which racism actually exists in Britain with the sentiment that ‘things are better’, this is remarkable especially when figures show that:

*“Black Caribbean boys remain three times as likely to be permanently excluded from school and twice as likely to experience fixed-term exclusion. These figures vary from area to area, with some areas where Black boys are six times more likely to experience permanent exclusion”<sup>20</sup>*

Furthermore in relation to stop and search, statistics show that things have actually got worse than they have better:

- *When the Stephen Lawrence Inquiry report was published in 1999, Black people were six times more likely to be stopped and searched than their white counterparts. In 2008, they were seven times more likely to be stopped and searched.<sup>21</sup>*

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<sup>19</sup> See EHRC, ‘Strategic plan of the Equality and Human Rights Commission 2009–2012’, pp37 [http://www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf)

<sup>20</sup> See Chouhan, K et. al (2010) ‘The Price of Inequality, The Black Manifesto 2010’, pp42.

<sup>21</sup> Chouhan, K et.al (2010) ‘Institutional Racism no longer appropriate for whom?’ The Equanomics UK Index, pp12.

- *In 2008 the stop and search of African Caribbeans under the counter terrorism legislation rose by 325% (Matthew Ryder in the Observer, 03/05/09)<sup>22</sup>*

To argue that racism among the youth is 'far from absent' is somewhat an understatement in light of the figures, and to suggest that it is less prevalent is rather dismissive and ties into the notion as racism as no longer relevant:

*"Structural inequalities, patterns of discrimination, and disparities in treatment by the criminal justice system, in employment and poverty levels, continue and are well documented. The significance of this concept (Racism) is increasingly undermined with the current and somewhat convenient dismissal of racism as a problem. One of the key outcomes of Obamas election prompted even more so exactly this rejection, that is, his election has seen to consolidate the view by many that we are now living in a 'post-racial' world where problems associated with racism are no longer relevant today"<sup>23</sup>*

As such:

*"The growing questioning and denials of (institutional) racism, seem to be part of a trend to move away from a focus on race equality and particularly structural race inequality"<sup>24</sup>*

The impact of such mainstreaming of equality is thus clearly problematic as it weakens, reduces and dissolves individual inequalities, as Alison Parken (2010) points out:

*"The multi-strand mainstreaming method brings a multi-strand lens to investigating inequalities and resists collapsing distinct inequalities to 'one size fits all' solutions. It retains a heterogeneous focus on the origins of both inequalities and redress" (Parken 95: 2010).*

In addition to the diluting of inequality, it is also important to note that throughout the strategic plan the EHRC fails to adequately show how it is and will be radically different from the previous single issue bodies, although we are presented with notions of 'modernness and harmonisation', we are unable to see the practical measures which make this body more autonomous and more efficient than its predecessor commissions, as Meer asserts:

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<sup>22</sup> Ibid.

<sup>23</sup> See, Chouhan, K et.al (2010) 'Institutional Racism no longer appropriate for whom?' The Equanomics UK Index, pp13.

<sup>24</sup> See, Chouhan, K et.al (2010) 'Institutional Racism no longer appropriate for whom?' The Equanomics UK Index, pp8

*“Like the bodies it replaced, members of the new Commission are appointed by the Secretary of State to serve for a fixed term and are funded centrally by the Home Office departmental budget to which the EHRC will report to annually. Hence, there is nothing to suggest that the EHRC has any greater independence than the equality bodies it has amalgamated and, as its remit will also include basic human rights, there is a concern that some real independence from government may be essential” (Meer 207: 2010).*

It is important to note that the European Fundamental Rights Agency in its most recent Annual Report (2010) makes reference to a number of both positive and negative aspects of current equalities UK policy and practice. Firstly, it notes that only the UK (and Sweden and Finland) of the 27 EU member states regularly collect and publish data on racist crime. Secondly, it confirms the significance of the establishment of a new House of Commons committee with the task of producing recommendations for rectifying the under-representation of women, ethnic minorities and disabled people in the House of Commons. Thirdly, despite only a third of EU citizens believing they know their rights related to non-discrimination or harassment, knowledge of these rights is highest in the UK, Finland, Sweden, and Malta at the top with more than 40 per cent awareness and this has level has increased by 6-8% over the last two years. Fourthly, the formal commitment of the UK to the 21 key UN and Council of Europe conventions in this field is not however complete, unlike Spain for example. It is also the worst EU member state in terms of its level of formal commitment to the various provisions of the European Social Charter.<sup>25</sup>

Throughout this section we have investigated the potential dangers linked with de-emphasising historically underprivileged and under-represented minority groups through the implementation of a more generic and mainstreamed framework (Meer 209: 2010). We have explored the implications and limitations of the key themes arising from the strategic plan to identify how this discourse ties into, and positions itself, within the broader political and social context. The next section will analyse the key discourses from political elites regarding the main areas addressed by the EHRC and their proposals for changing the face of equality across Britain. We will explore further the debate surrounding the shift towards a single body of representation from both its advocates and opposition in order to understand what this tells us about the changing political landscape of contemporary Britain.

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<sup>25</sup> See FRA (2010) Annual Report 2010, Vienna: FRA, [http://www.fra.europa.eu/fraWebsite/attachments/AR\\_2010-conf-edition\\_en.pdf](http://www.fra.europa.eu/fraWebsite/attachments/AR_2010-conf-edition_en.pdf)

## **Analysis of Key Discourses from Political Elites Regarding the Main Issues Addressed by the EHRC:**

In October 2010, the EHRC launched their 'landmark' report '*How fair is Britain?*'<sup>26</sup> The report demonstrates the way in which the post-racial logic continues to operate within the organizations' discursive horizons. Racism becomes simply a subset of prejudice and attitudes rather than systemic violations. As the report declares, "as little as half a century ago, sexism, racism and other forms of prejudice pervaded almost every aspect of daily life"<sup>27</sup> Thus not only is racism just a form of prejudice it is also something that is to be found in the past. The exceptional character of racism then, alongside its dissolution into generalized discrimination is asserted and this paradoxical formulation is a hallmark of the post-racial logic.

In this report of over 700 pages, racism is mentioned a further nine times, half of which refer to the penal system.<sup>28</sup> The report points to some startling effects of "unfairness" in statistics which show how black populations continue to be over-represented in prisons and poor housing etc, in addition to this it also demonstrates the scale and nature of institutionalised racism in Britain, however, its difficulty in describing racism other than in exceptional terms means that its capacity to explain the phenomenon is restricted.

The report argues that attitudes towards racial prejudice have changed and such discrimination is less prevalent. This captures the central drama of post-racial logic- that is, the persistence of racism without racists.<sup>29</sup> The reception of the report also shows how the conflation of the various forms of social disadvantages allowed the right-wing press to represent the report in ways which reinforce the idea that Britain is a more tolerant and post-racial society, and at the same time more left-inclined press were able to see racism existing in pockets of disadvantages.<sup>30</sup>

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<sup>26</sup> See EHRC (2010) '*How Fair is Britain? Equality, Human Rights and Good Relations in 2010: The First Triennial Review*'  
<http://www.equalityhumanrights.com/key-projects/triennial-review/online-summary/>

<sup>27</sup> See EHRC (2010) '*How Fair is Britain? Equality, Human Rights and Good Relations in 2010: The First Triennial Review*', pp.11  
<http://www.equalityhumanrights.com/key-projects/triennial-review/online-summary/>

<sup>28</sup> See pages 118, 161, 172, in EHRC (2010) '*How Fair is Britain? Equality, Human Rights and Good Relations in 2010: The First Triennial Review*'  
<http://www.equalityhumanrights.com/key-projects/triennial-review/online-summary/>

<sup>29</sup> Hesse, B and Sayyid, S (forthcoming) *The Paradoxes of Racism*, London: Pluto Press.

<sup>30</sup> For examples of this difference see reports from The Daily Mail and Sky News, compared to The Guardian and New Statesmen.

As such the post-racial consists of the combination of these two apparently contradictory elements: a celebration of a society in which racism is seen as fading, while structural racism continues to blight the lives of people of colour in myriad ways. The post-racial thus makes it difficult to use racism as an analytical category able to explain patterns of social inequality and segregation, we will now go on to explore how such logics facilitated the formation of the EHRC.

The arguments surrounding the setting up of the EHRC can be seen as part and parcel of the logic of the post-racial, however such debates are often not enunciated in those terms. The sites of enunciation of political elite discourse can be said to consist of the following: the major political parties, the various think-tanks (some linked with political parties or other civil society organizations), commentariat (that is, journalists-commentators writing for daily newspapers and weekly magazines e.g. *Spectator*, *New Statesmen*), and increasingly the blogosphere, and various government agencies. The 'battle of ideas' at least in public policy format takes place along these sites and there is considerable overlap between various points both in terms of personal relationships, ideology and sometimes funding.

It is possible to identify five key developments in the elite political discourse which facilitated the establishment of the EHRC by changing the hegemonic views of racism and its preventions. The first development was the impact of the murder of Stephen Lawrence and the subsequent inquiry to investigate police failings in the case. The report published in 1999 introduced the concept of 'institutional racism'<sup>31</sup> into the national public arena, where major organizations accepted the existence of institutional racism and vowed to combat it. Greg Dyke the head of the BBC at the time declared the BBC to be institutionally racist.<sup>32</sup>

The report made a total 70 recommendations not all of which were implemented. One of the key findings of the report was that police should understand an incident to be racist if one of the parties or third party described the incident as racist. The effect of this subjective definition of racism was that white (i.e ethnically unmarked members of the national majority) became the largest victims of racist violence. At heart of the subjective definition of racism was a conceptualization of racism that saw not a specific form of cruelty but something more

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<sup>31</sup> The concept of Institutional Racism was most prominently used by Stokely Carmichael and Charles v Hamilton (1967).

<sup>32</sup> See Louise Jury 'BBC is 'hideously white' says Dyke', *The Independent*, 7 Jan, 2001 <http://www.independent.co.uk/news/media/bbc-is-hideously-white-says-dyke-702583.html>

For more information on the logics of racism with the media see, Law, I (2002) *Race in the News*, Palgrave: London

generalisable so that it could be said to be the automatic consequence of a clash of members from different ethnicities. This paradoxically undermined the structural dimensions of Macpherson's deployment of institutional racism. The heuristic formulation that considered racism to be prejudice plus power was thus changed and the power dimension of racism was increasingly obscured. As a consequence racism became fungible.

This related to the second development which was associated with New Labour and the idea that Britain had by all intents and purposes become a multiracial society, at ease with its ethnic and cultural diversity. Chicken tikka masala was hyped up as the nation's most popular dish. It was pointed out that chicken tikka masala was a dish not indigenous to South Asia but invented in Britain's multicultural conurbations illustrating the blending of heritages.<sup>33</sup> The signifier of chicken tikka masala became attached through a chain of equivalence which saw the re-definition of Britain as 'Cool Britannia'. It was within this context that racism was seen no longer as a significant or major problem in the UK and its occurrence was marginal and exceptional. These changes echoed similar debates in the United States which heralded the demise of racism e.g. Dinesh D'Souza's (1995) book *The End of Racism* achieved bestseller status influencing right-wing commentators in both sides of the Atlantic.

The third key development in the formation of the EHRC was the idea of intersectionality. This sociological theory saw social equality as being caused by multiple and simultaneous forms of discrimination. In other words, this approach rejected traditional monadic concepts of social inequity, which saw it largely as a result of a single overarching factor be it race/ethnicity or class or gender. This led to debates which argued that discrimination had to now be understood as being inflected through various subject positions that individuals may occupy. In other words systematic oppression reflects the intersection of multiple forms of exclusion, subordination and humiliation. Intersectionality contributed to the need for a holistic or integrated approach to discrimination, that is, if oppression was inflected through various intersections of multiple discriminations (based on an interrelationship between ethnicity, gender, sexual orientation etc) then it followed that a human rights approach which offered multiple protections, was the best way to combat discrimination, including racial discrimination:

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<sup>33</sup> See Sophia Ahmed (2006) in Ali, Kalra and Sayyid (2006) *A Postcolonial People*, Hurst: London

“There is then a great hope for the harmonisation of different protections across different strands, but whether this materialises in a progressive form remains subject to debate” (Meer 211: 2010)

Fourthly an argument was made that merging all the various equality stands and bodies and responsibilities into a single unit would lead to administrative simplification and therefore enhance effectiveness. This was an echo of the arguments used by a number of local authorities in the 1980s in which anti-racism units were submerged into generic equality units which included agencies dedicated to combated discrimination on sexual orientation fronts. Part of New Labours project of public sector reform was to introduce private sector logics into the provision of public services, thus the Government largely supported the establishment of the EHRC in the view that there were “in the longer term” arguments in favour of a single equality body:

*“We believe that, in the longer term, there are arguments in favour of a single, statutory commission offering integrated advice, guidance and support on equality matters. That would be in the interests of businesses and individuals, particularly those who are the subject of multiple discrimination. It would also help to ensure a coherent approach to equality issues across the board”<sup>34</sup>*

The promise of the ‘joint up government’ approach was an integrated and flexible public sector responsive to the demands of its ‘customers.’ This administrative reorganisation was one of the key drivers among civil servants at least in reducing the various equality strands into one focussed agency ensuring equality for all.

Fifthly it was argued by many that the current equalities regime did not cover all forms of discrimination. This argument found particular resonance among Muslim groups who campaigned for protection from discrimination on religious grounds. Muslim public opinion in Britain increasingly felt that the current legislative framework did not meet the challenge of Islamophobia since the legislation only protected religious groups which could be understood in purely ethnic terms, for example Jews and Sikhs. Advocates of a single equalities approach were able to convince many Muslim bodies and civil society organisations that the move towards a single commission for combating discrimination on the grounds of religion and belief would mitigate the effects of Islamophobia, thus in the name of religion anti-racism was dissolved into just to one of seven equality strands, as Meer points out:

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<sup>34</sup> See Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005, pp26.

*“A new Single Equalities Act was advocated both by the Commission on the Future of Multi-Ethnic Britain [CMEB, 2000] as well as the Forum of Action against Islamophobia and Racism [FAIR]. The latter argued that a single Act would show ‘the indivisibility of the principle of equality and ... place all grounds of discrimination on an equal footing.... More importantly, the amalgamation would rid the anti discrimination law of the confusion, complexities and inconsistencies that currently exist” [FAIR, 2002: s.4, paragraph 20]. (Meer 207: 2010)*

What this position did not take into account was the way in which racialisation could act to transform religious communities into virtually ethnic communities, in other words, the complexities of the process of racialisation and its relationship to cultural and religious factors was abandoned in favour of a human rights approach which had little room for group rights. These five developments were the background to the articulation of a discourse which saw the formation of EHRC.

We will now highlight the key discourses from political actors concerning the debate around the EHRC and the Single Equalities Act. In the early stages when the EHRC was being set up and the Single Equalities Act was in its Bill stages there was much discussion in Parliament from those who supported its implementation and those who opposed it. The majority supported the move towards a Single Equalities Commission and the subsequent Single Equalities Bill (which has now been passed as an Act). The CRE, EOC and the DRC embraced this move and stated the following:<sup>35</sup>

*“We welcome the publication of this much improved Bill and recognise the changes that have been made which will bolster the new Commission for Equality and Human Rights...We intend to work wholeheartedly with the Equalities Review, our sister Commissions and new strands as we move towards a unified legal and institutional framework that can contribute to greater equality across Britain” (Commission for Racial Equality, Trevor Phillips, Chair, pp31)*

*“The EOC strongly supports the Equality Bill. We have been arguing for a single champion of equality and human rights issues for several years. Not only does it make sense for individuals, employers and service providers, but from our experience we know that achieving equality for men and women requires solutions that take account of more than their gender. For example, we know from our research on poverty that Pakistani and Bangladeshi women, older women and disabled women are more likely to be poor and excluded than Pakistani & Bangladeshi, older or disabled men. Bringing together expertise on all equality issues will help deliver sex equality for all women and men” (Equal Opportunities Commission Julie Mellor, Chair, pp32).*

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<sup>35</sup> Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005, pp31-32

*"The Disability Rights Commission (DRC) especially welcomes the recognition in the Bill that disabled people should have a clear and distinctive voice within the CEHR, backed up by a properly resourced Disability Committee with an effective range of delegated powers...The combination of a Disability Committee with executive powers and a guaranteed place on the CEHR Board for a disabled person enshrines the principle that disabled people must have a decisive role in developing and leading future work on disability rights...The Bill creates the conditions in which the voice of disabled people can be heard" (Disability Rights Commission, Bert Massie, Chairman, pp31)<sup>36</sup>*

Barbara Roche (the Minister then responsible for equality co-ordination across government) announced in a speech to an Institute of Public Policy Research (IPPR) Conference entitled *Equality in the 21st Century* on 15 May 2002, that she would be heading a Cabinet Office project "to consider in detail possible models for a single equality body". The outcomes of this review were published in October 2002 in the document *Equality and Diversity: Making it Happen*. This accounted the opinions of a seminar attended by over 180 people from 120 organisations in July 2002:<sup>37</sup>

*"The overall view of those attending was that a single equality body would have many benefits to offer, provided that it was established on an effective basis. It could champion equality overall; provide integrated advice both to individuals and organisations; and provide more effective means to address multiple discrimination. It would be a real force in tackling institutionalised discrimination. It needed however to be grounded in a powerful vision of equality; have robust powers and be properly resourced; and there needed to be a clear timetable and sufficient time for planning. Many emphasised the need for harmonisation of equality legislation to enable a single body to deliver fully; and that there must be no diminution of focus on the needs of individual strands, the diversity of which need to be respected"<sup>38</sup>*

Those in opposition to the Equality Law suggested it was 'in itself too interventionist' and failed to achieve its objectives, as Earl Ferrers in the House of Lords debates on the Bill argued:

*"Far from creating a human, contented and equal society, the Bill will produce a society in which there is antagonism, aggression and fear. Of course, that it is not its intention, but I think that that will be result. The noble and learned Lord the Lord Chancellor said that the Government wanted to build a truly equal society, but equality can produce drabness, uniformity, dullness and lack of enterprise. I remind your Lordships of what the late Lord Hailsham said so well in his book *The Dilemma of Democracy*: in a democracy in which uniformity is not the aim, and diversity is*

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<sup>36</sup> Please note, in the early stages the EHRC was referred to as the CEHR (Commission for Equality and Human Rights)

<sup>37</sup> See Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005, pp27.

<sup>38</sup> Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005, pp27.

*encouraged, each man and woman is free to join a restricted group in which he can excel and offer service. Such groups are not class conscious examples of social or intellectual or aesthetic snobbery. They are the salt of the earth. They are the church workers, the youth leaders, the club secretaries, the trade union officials, the welfare officers, the pigeon fanciers, the Scouters, the allotment holders, the members of residents' associations, the Salvation Army Captains, the exponents of almost every free activity you choose to mention, that is except the things which mean drabness, boredom, cynicism, non-involvement in society, and mediocrity in all things"*<sup>39</sup>

Lord Lester of Herne Hill also stated his opposition to proposals of a single equalities body and the single equalities bill:

*"The regulations will forbid religious discrimination, sexual orientation discrimination, disability discrimination and age discrimination, but only in employment. That is not because it is right in principle to fail to tackle unjustifiable discrimination on those grounds in education, housing and the provision of services and facilities; it is simply because the framework equality directive is confined to the employment field. Without primary legislation, Parliament cannot cover these wider areas, as they are covered in the Sex Discrimination Act and the Race Relations Act. What the Government describe as their full agenda of action on equality matters, including what they call "targeted legislation" misses the important target. Without primary legislation, women will continue to face a heavier burden of proof in discrimination cases outside the employment field; a homosexual or a Muslim denied a service because of sexuality or religion will still be unable to obtain legal redress; and an elderly person, denied essential services by a health authority or local council on the ground of age, will be denied legal redress. Except in the field of race relations, there will be no positive duty on public authorities or large employers to make progress towards equality of opportunity, even though, as long ago as November 1999, the Government promised legislation to create one. To adapt the words of George Orwell, all animals will be equal, but some animals will be more equal than others"*<sup>40</sup>

Despite concerns the overwhelming majority supported the move towards the single equalities act and the establishment of the EHRC, with the emphasis being placed upon the simplicity and harmonisation of the distinct equality strands. However, three years on we are able to see that the promises of greater equality throughout Britain have been somewhat premature, as Meer argues, the shift has meant that different groups experience different access to protection, as such some are more protected than others:

*"While different equality strands continue to provide different levels of protection, it will compound Meer's sense of an equality hierarchy in which some groups are better protected than others" (Meer 210: 2010)*

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<sup>39</sup> Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005, pp23.

<sup>40</sup> Equality Bill, Bill 85 of 2005-2006, Research Paper 5/77, 17 Nov. 2005, pp19.

Many BME third sector organizations also express their concerns with the move towards single equalities as it is suggested that it fails to take into account specific issues of certain groups, for example:

*“The failure to recognise that BME third sector organisations operate with specific concerns and constraints which cannot be simply willed away as part of a general commitment to equalities, combined with the refusal to fund single issue third sector organisations and the assumption that the BME third sector is by definition based on single issue concerns, means that the BME community is likely to lose articulate voices and organizations”<sup>41</sup>*

We are thus able to see the emptying out of race issues as the question of race equality has been subsumed under the umbrella of the EHRC. The fact remains that racism is still prominent in contemporary British society and the attempts to mask its existence through the veneer of the discourse of the EHRC insisting that all discrimination should be treated equally remains extremely problematic and seems to signal towards a growing denial and neglect of racism through the growing hegemony of liberal postraciality, as Doreen Lawrence, mother of Stephen Lawrence expresses:

*“I was disheartened about the merging of the Commission for Racial Equality to the new Equality and Human Rights Commission and my views are shared by many in the black community, I see this as the watering down of race relations at a time when race really needs to be on the agenda. I am told that by having Trevor Phillips as Chair, we have a champion to address the race issue- this does not assure me that the needs of the black community will be represented- what would assure me would be if we were given a statutory race committee and the needs of ethnic minority communities were likely to be met by the upcoming single equalities bill”<sup>42</sup>*

In light of this it is however also important to point out that the level of legal activity on casework and formal investigations in the racial discrimination field has substantially reduced with the transition from the CRE to the EHRC. The EHRC pursued 330 strategic legal cases in 2008-09 across all equalities areas, of which 250 were dealt with by the enforcement team and 80 by the casework team. One example, cited in the recent annual report, of the few that specifically dealt with racial discrimination is as follows:

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<sup>41</sup> See Chouhan, K et. al (2010) ‘The Price of Inequality, The Black Manifesto 2010’, pp15.

<sup>42</sup> Chouhan, K et.al (2010) ‘Institutional Racism no longer appropriate for whom?’ The Equanomics UK Index, pp32.

“The Commission intervened in Southall Black Sisters (SBS) v Ealing Council. We argued that the council had failed to comply with the Race Equality Duty by not carrying out a race equality impact assessment of its decision to change the funding criteria for the domestic violence support group, SBS, and that withdrawing funding could be unlawful. Ealing Council accepted that the Commission was correct during the hearing”<sup>43</sup>

During this period the EHRC launched only one formal investigation related to racial equality which focussed on racial discrimination in the construction industry. This inquiry reported in 2009 and found that a negative image of the industry and poor recruitment practices contributed to low numbers of ethnic minorities entering the sector.

There remains on the whole a stubborn sense of optimism for the EHRC for ensuring a fairer society for all, however this report has analysed the risks and implications involved with the shift towards a single equality body. Within the current climate it would be a mistake to put racism on the back burner:

*“It is between the tale of Europe’s tolerance and a reality of profound deception. Race structures our imaginative capacity while hiding itself from view. The bodyguards at race’s door are indefatigable” (Lentin 501: 2008)*

The formation of the EHRC has to be seen in the context of British society in which the rhetoric of racism has at least at a public level changed from what was common in the Sixties and Seventies. There is little doubt that an anti-racist etiquette has developed, a process largely influenced by transformations in the United States. The idea that ‘race’ is simply one of the ways in which individuals comport themselves finds its analogue in the notion of an integrated human subject who can suffer multiple forms of discrimination and these multiple forms are axiomatically equivalent: so that racism is similar to sexism which is similar to discrimination on the grounds of disability or sexual orientation. Such an approach de-historicises racism and fundamentally disempowers anti-racist struggles.

## **Summary:**

Throughout this report we have analysed the implications of the EHRC and the Single Equalities Act for understanding the semantics of tolerance and anti-racism policies in

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<sup>43</sup> See EHRC (2009) Annual Report and Accounts, 2008-2009, London: EHRC, pp 9  
[http://www.equalityhumanrights.com/uploaded\\_files/annual\\_report\\_and\\_accounts\\_2008-09.pdf](http://www.equalityhumanrights.com/uploaded_files/annual_report_and_accounts_2008-09.pdf)

Britain. The report examines the claims made on behalf of the EHRC and investigates the five key developments that facilitated its formation. The shift from anti-racism towards a single equalities commission based on the notion of human rights demonstrates the logic of the post-racial at work. The social and political changes in British society helped foster a sense in which anti-racism began to be seen as being outdated and unhelpful.

The proliferation of ethnically marked populations and the introduction of categories such as asylum seeker, economic refugees, and eastern European immigrants, transformed Britain's ethnoscape which had been structured previously around a white majority and a South Asian and black minority. The fragmentation of the ethnic minority subject position seemed to suggest that social policy could no longer be couched in terms of the classical categories of racism and anti-racism. The establishment of the EHRC was both a contribution and the culmination of a process by which the post-racial logic became hegemonic in organising the semantics of tolerance and anti-racism.

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