

**PRESENTATION TO STUC, BLACK WORKER'S  
CONFERENCE  
PERTH, 4/5 OCTOBER**

**FROM ANTI-RACISM TO EQUALITY AND HUMAN RIGHTS  
*CHANGING DISCOURSES, UNCHANGING REALITIES***

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**1 Introduction**

Delegates, Mary, Senior Committee members, I would like to thank you for being kind enough to invite me for a second time to address you as a guest speaker. About 6 years ago, I stood on this very platform as a Scottish Commissioner for the CRE. I might use different words today, but my message remains the same - one of hope and determination to use every possible avenue to achieve racial equality.

It is, as usual, a privilege to be able to share my thoughts on the changing landscape and the opportunities I see for the future of racial equality in Scotland, especially in terms of workplace cultures and practices.

As some of you might know, I am currently a member of the Scottish Human Rights Commission and the Equality and Human Rights Commission. These for me are just two of the avenues I use to drive forward the race equality agenda. So today, I would like to address you, not necessarily as a commissioner for either bodies, but as someone who cares passionately about race equality and human rights more broadly

## **2 A positive injection in a negative climate**

Many argue that it is difficult, in this current economic, social and political climate, to be positive about anything. So I hope that what I have to say today will give you some food for thought and inspiration to keep drive for racial equality alive in Scotland

### **2.1 Domestic legislative changes**

Legislative changes have over the last two years, re-opened debates and concerns over the future of race equality in Britain. Another major moment, as it were, in the struggle for racial equality. This in turn has once again

introduced new discourses with organisations scurrying around to rewrite traditional narratives.

I deliberately chose the topic: “**changing discourses, unchanging realities**” as I feel strongly that we must not lose the focus on what the real issues are for us here today - it is eradicating racial discrimination and ensuring equality in all spheres of life irrespective of ‘**colour, nationality, national origin ethnicity or ethnic origin**’

And despite our collective concerns of intersecting and cross-cutting, vertical and horizontal inequalities - this particular aspect of inequality will uniquely remain more of a concern for certain interest groups. Those most vulnerable to racial inequality and discrimination will quite rightly relate to this area more strongly.

Over the last year, I have become aware of **two** major areas of concern with regards to the future of so-called ‘single equality’ strand initiatives, in this case race.

- The first relates to the approach proposed in the Equality Bill, 2006 and the Consultation paper, Framework for a Fairer future, 2008 - ie the move from a strand specific approach (which focused

mainly on addressing discrimination and inequality faced by specific groups) to a multi-strand, cross-strand, holistic approach to achieving fairness as reflected in the Human rights Act (1998).

- And the second relates to the concerns around the operation of two separate organisations with equality and Human Rights remits in Scotland - SHRC and EHRC. Concerns in this regard, relate mainly to the relationship between the two in terms of responsibilities and remits.

In this respect, I feel that this transition period provides us with an ideal opportunity to shape the equality and HR agenda in a manner that not only suits the Scottish context, but also the interests of specialist and human rights groups across Scotland.

The work of the EHRC and SHRC is still evolving, and the emerging strategic plans will soon be out for consultation. It is essential that a broad spectrum of voices is heard during these consultations.

We need to be much more agile in using the everchanging legal and administrative frameworks for addressing both specific and collective equality concerns. In most cases, while legislation on paper usually promises a lot, in reality though, resources on the ground determines how successfully these will be implemented to deliver the widespread, desired effect. It is therefore, important to seek different and creative ways to achieve the race equality outcomes we wish to see in Scotland.

## **2.1 Race Equality in the context of Single Equality Bill**

Turning specifically to the single Equality Bill, a major concern for many is the potential erosion of focus on race equality. This is understandable, given the historical reluctance in Scotland to acknowledge racism as a problem in our society, despite the overwhelming evidence.

Once this barrier was passed towards the end of the late 90s, many of us in the field had to deal with misunderstandings surrounding the mainstreaming of race equality. Many took this to mean a colour-blind approach.

The current proposed holistic approach is logical and right in progressive societies yet critics have questioned the practicality of this approach in reality. Will it be done professionally? Will all areas of inequality be given balanced consideration? Is there adequate expertise to make this work? It is a retreat to earlier earlier forms of neo-liberalism?

Past failures to address racial equality effectively, have understandably left many uncertain about the future of racial equality. There is also no denying that there are still some who are uncomfortable with issues of race, sexual orientation and religion. And I believe that there is now more than ever, a need for us to keep the pressure on those responsible to deliver on race equality.

In reality, I do not believe that a choice ought to be made between 'strand-specific', 'cross-strand' or 'multi-strand' approaches. While it makes sense from an administrative perspective to take a holistic approach to achieving equality within large public institutions and to balance the rights of different interest groups, it is equally relevant to have alongside this, specialist agencies on the ground to campaign for courses, to benchmark, scrutinise and monitor progress in specific areas of inequality.

Indeed, without the specialist knowledge, expertise, networks and pressure that these agencies bring, it will be impossible for the larger institutions to successfully, achieve the holistic equality outcomes they seek. I would therefore urge delegates not to discourage different approaches to achieving race equality in Scotland but to encourage these as part of the whole change process towards achieving broader fairness and justice for all.

In terms of race equality, the task on hand for the two new designated bodies operating in Scotland, is to build on the momentum set up by the previous equality bodies. Failure to do so will invariably take the equality agenda back to the mid-20<sup>th</sup> century. It is the task of groups like yourself and voluntary and community groups to ensure that SHRC and EHRC are held accountable for driving forward, and not backward, our achievements in race equality to date.

**Achievements to date: lets look briefly on the legacy  
<sup>1</sup>that can be built on by the SHRC and EHRC**

- The framework that was developed and implemented for embedding the race equality public duty - this can easily include other equality

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<sup>1</sup> CRE, 2006, A Lot Done, A lot More to Do

strands and more importantly, the duty to promote and reflect HR protection in public institutions, as required by both the Human Rights Act 1998<sup>2</sup>, The Scotland Act, 1998<sup>3</sup> and the Scottish Commission for Human Rights Act, 2006<sup>4</sup>.

- The network of voluntary organisations developed and initiated by the CRE, including the RECs to deliver race equality work at grass roots and with funding, in the case of the EHRC<sup>5</sup>
  
- The strong partnership approach established by the CRE to delivering race equality through working closely with our inspectorates and local communities
  
- The joint initiative approach with the Scottish Government and Parliament, which resulted in for example, the *One Scotland, Many Cultures* project, the *non-legal investigation into police practice in Scotland* and the National Review of Race equality in Scotland, which was aimed at setting national race Equality targets for Scotland.

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<sup>2</sup> DCA, 2006, Human Rights Human Lives, a handbook for public authorities

<sup>3</sup> Scotland Act, 1998, Schedule (5) part 1

<sup>4</sup> See Schedule 2 and 3, Scottish Commission for Human Rights Act

<sup>5</sup> As reflected in Section 17 of the Equality Act



- The tradition of developing a race equality manifesto for the Scottish Parliament aligned to current national objectives, in this case: **wealthier and fairer, healthier, safer and stronger, smarter and greener.**
- Comprehensive and robust reviews of progress on race equality and public sector performance in Scotland as part of the holistic approach to be taken.
- The manner of setting Equality objectives in line with local issues to avoid a centralised top-down culture.

This will of course require the development of new and different types of relationships between the EHRC, SHRC and stakeholders - all directed towards the goal of creating a culture of fairness, dignity and justice for individuals and communities alike.

It is therefore imperative that the Scottish Government, Parliament, local authorities and voluntary sector alike, take a proactive role in shaping the new Equality Bill to ensure its relevance for Scottish Communities and citizens.

The draft Equality Bill proposes notable positive changes, which if effectively implemented, in the Scottish context, will no doubt have a considerable impact on employment practices, workplace cultures and, also finally address the under-representation of black and minority ethnic people in employment sectors.

While employment and equality are reserved issues, we must not lose sight of the fact that it impacts fundamentally on all our devolved areas in Scotland, especially education, life-long learning and enterprise.

Further, the proposal to extend the scope of the positive duty, will enable employers to take into account more directly, (when selecting between two equally qualified candidates) under-representation of ethnic minority communities.

But while extending (till 2030) the permission to use women-only short-lists in selecting parliamentary candidates, short-lists for ethnic minorities have been avoided with suggestions for encouraging applications through non-legislative means. Given the limited impact of non-legislative measures to date, this is a missed

opportunity and it will be prudent to challenge this aspect during consultation responses, especially given the current pattern of ethnic minority under-representation in the Scottish Government and Parliament.

In regard to the single equality public duty, the SHRC hope to influence local discussions and debates by proposing the inclusion of the specific promotion of HR protection, as required in the Human Rights Act 1998.

The latter, in my view will allow for a more rounded process towards a positive culture change in Scotland. One that is underpinned by values reflected not only in the Single Equality Act, 2006 but also, as relevant to us in Scotland, the Scottish Human Rights Commission Act, 2006, Scotland Act 1998 and the European Convention of Human Rights.

### **2.2.1 The Operation of SHRC and EHRC in Scotland.**

Now I would like to speak briefly on the interface between equality and Human Rights and the relationship between the SHRC and EHRC. Both possess legal instruments to

tackle equality and human rights in Scotland, albeit at different levels and jurisdiction.

While some continue to question the benefits of having two similar bodies in Scotland, this is not unique. Internationally, it is not unusual for nation states to have separate HR and equality bodies, but ideally a harmonisation of the two make things better on the ground. Whilst appearing similar to each other, a scrutiny of the legislative framework will show that each possessing very distinct but complimentary remits.

In effect, the Equality Act, 2006 consolidates 6 strands of equality in line with Article 14 of the European Convention. SCHR is much broader in that in addition to Article 14, it includes the full range of protection for individuals in line with the UNHRC.

Secondly, each commission has different types of legal powers which plays out differently in Scotland give the Devolved-Reserved arrangements. In a nutshell, SHRC has HR responsibility for all devolved areas - ECHR has responsibility for equality in all devolved and reserved areas as well as HR for reserved areas and limited Human Rights powers.

## **2.2.2 What does this mean in practice?**

SHRC:

Established by Scottish Commission for Human Rights, 2006 as a requirement of the Scotland ACT, 1998-  
Grounded in principles of HR: Paris principles – independent of Government

- Human dignity and a human rights culture-balanced rights and responsibility - fairness and equality is core and implicit
- Duty of nation state to respect, protect, promote and realise HR
- Focus is on the impact on individuals rather than with an equality strand
- Fills gaps left by equality strands through interpretation and broadening anti-discrimination protection (refugees)

- Strengthens the strands by balancing rights and responsibilities and competing rights through mechanisms of proportionality, promotion and good relations

## EHRC

- Established by Equality Act, reserved but impacts on devolved areas - responsible to Equality Unit: Sponsor Department.
- Objective is to harmonise equality strands, simplify legislation and make equality and human rights issues more manageable for organisations, structures and processes.
- The EHRC, in its response<sup>6</sup> to the consultation paper argues that the new act must go beyond simplifying and harmonising and it calls for “a constitutional equality guarantee” and for a “new deal in fairness” to bring about social change.

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<sup>6</sup> “Fairness, a new contract with the public”, EHRC, July 2008

- This will be underpinned by encouraging public authorities to comply with Section 6 of Human Rights Act, 1998<sup>7</sup>

I feel certain that the two commissions can work in a complimentary way to strengthen our fight in Scotland against all forms of discrimination and inequality, given our inherent common goals.

In Scotland, we have a tradition of working in partnership to achieve common goals and outcomes in the equality field. I see little reason for two commissions to do otherwise in regard to racial equality in the new arrangement.

While it is important to have clarity with regard to legal responsibility in terms of devolved and reserved issues on the ground, individuals are understandably directly concerned with the day-to-day reality of discrimination and the violation of their dignity and civic rights.

Both Commissions will deal with issues at an individual as well as an institutional level, both will influence policy and practice - this does not mean duplication of resources but careful planning, negotiation and consensus so that

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<sup>7</sup> Ie: compliance with European Convention and thus indirectly, Scottish Commission for Human Rights

institutions, communities and individuals do not get mixed messages.

It is therefore the responsibility of both commissions to ensure consistent information on common areas and a seamless service of support and interventions on for all who live in Scotland.

For example, taking a 'rights based' approach; the SHRC will ensure the dignity, respect and fair treatment of all who live in Scotland. This could mean using its power to enter places of detention, to inspect, interview and report to Parliament - it would need to intervene in cases, give evidence or conduct enquiries into policies and practices on a regular basis

On the other hand, the ECHR will act as one source of information and advice and tackle discrimination on multiple levels. It has the broader powers, including the power to conduct a judicial review on Human rights issues, but only in reserved areas – a power that the SHRC does not have but with the consent of the SHRC, The EHRC can use its powers in the devolved areas of Scotland.



Similarly, while SHRC does not have enforcement powers, it will work with ECHR to bring pressure on organisation to effect change.

So in effect, individuals in Scotland have a double layer of protection and the task of the two commissions is to ensure that no area of discrimination or human rights abuse falls through the net.

In this regard, I feel certain that both commissions will honour the sentiments of the Vienna Declaration, which stresses the importance of focussing on traditional areas of discrimination as well as the universality of Human Rights.

It is therefore not just desirable, but essential, that both commissions work in an inter-related and indivisible way to achieve race equality in Scotland.

## **Conclusion**

In conclusion, I want to go back to where I started by saying that although the legal framework and responsible bodies for equality and human rights in Scotland are changing, as are discourses and narratives, the realities of

racial inequalities remain firmly rooted and unchanging. In the 21<sup>st</sup> century it rears its head in different ways, affecting different sectors of the community, but this does not mean that the traditional patterns have disappeared completely.

We need go no further than to examine the pattern of recent racial incidents in Scotland to appreciate this sentiment.

It is therefore the responsibility of ECHR and SHRC to ensure that we work in co-operation, rationalise resources, strengthen efforts and streamline our strategies to avoid duplication, contradiction of messages and more importantly, gaps in our work due to each feeling that it is the responsibility of the other.

You on the other hand, as activists and concerned citizens, should demand nothing less of the commissions than evidence of progress year on year, on inequalities, quality of life, life chances and enhanced understandings of individual rights. This must be backed by tangible outcomes in terms of individual and collective experiences of fairness, dignity and justice.

I thank you for listening