

Consultation Response

May 2009



Response to the Department of Communities and Local Government Race Discussion Document

About ROTA

Race on the Agenda (ROTA) is one of Britain's leading social policy think-tanks focusing on issues that affect Black, Asian and minority ethnic (BAME) communities. Originally set up in 1984, ROTA aims to increase the capacity of BAME organisations and strengthen the voice of BAME communities through increased civic engagement and participation in society.

ROTA's Articles of Association state that the charity is set up "to work towards the elimination of racial discrimination and to promote equality of opportunity, human rights and good relations between persons of different groups".

For historical and demographic reasons, our work prioritises London, but our activities and a number of our projects have national and international significance. To this end we work in close partnership with our membership and others interested in race equality, human rights and the promotion of good relations.

Our presence in London is enhanced by our two regional networks, MiNet and HEAR. **MiNet** is the London focused BAME network of networks, which joined ROTA in 2002 to strengthen the voice for London's BAME Third Sector in the development of regional policy.

HEAR is London's only pan-equalities and human rights network, which joined ROTA in January 2005. Its focus is on issues affecting London's equality and human rights third sector organisations.

ROTA definition of BAME and Approach to Race Equality

ROTA works on social policy issues that have an impact on race equality and BAME communities. We use the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, nationality or religion. ROTA would suggest that the Department for Communities and Local Government (CLG) adopt the ROTA definition which includes but is not exclusive to people of African, Asian, Caribbean, East European, Irish, Jewish, Roma and South East Asian decent. ROTA adopts a holistic approach to race equality and works in partnership with other Third Sector organisations that complement its expertise and have a similar vision

Methodology for this response

ROTA's policy work is evidence based in the sense that everything we do is informed by the views and real life experiences of BAME communities and the organisations that are set up to serve them. We collect evidence through:

- Action **Research** (qualitative and quantitative surveys)
- The ROTA based networks of **HEAR** and **MiNet**
- Events, consultations and conferences
- Working in partnership with others.

About the Strategy

ROTA welcomes the race discussion document and road-shows, a demonstration of government commitment to a race equality strategy. While there has been progress towards race equality in the United Kingdom, many people from Black, Asian and minority ethnic backgrounds continue to suffer from deprivation and inequality ROTA has in large part based the response on different aspects of the Equality Bill published in April 2009, this is because it will go on to shape and determine not only governments approach to race equality but that of all public authorities and shape the approach to achieving equality in general. Therefore if the Equality Bill is 'match fit' then positive and proactive policies can be put into place to achieve equality for all. It is imperative that the CLG use this opportunity through the consultation process to put race at the heart of the government agenda and engage meaningfully with BAME communities and the BAME Third sector that was set up to serve them.

The ROTA response is divided into six parts;

- 1 Keeping race on the agenda
- 2 Policy priorities
- 3 The role of the Public and Private sectors in achieving race equality
- 4 The role of the Third Sector and BAME communities
- 5 The impact of the recession
- 6 Indicators for a successful strategy.

Keeping race on the agenda

How can we make sure that race equality maintains a distinct profile within a wider programme of work to multiple disadvantage?
How should a race equality strategy focus on addressing disadvantage linked with race and ethnicity, as opposed to mainstream programmes?
Can we disentangle the role that race and ethnicity play in driving disadvantage from other factors, eg socio economic status?

It is crucial that race equality not only maintains, but also *regains*, a distinct profile within wider work which is aimed at tackling multiple disadvantage. A recent consultation run at ROTA with the BAME third sector¹, identified a high level of concern that:

¹ BASIS Interim Report: Policy Priorities for the BAME Third Sector (ROTA 2009)

Race equality is not on the agenda due to the debate around disadvantage, and therefore there is the risk of losing the understanding and complexities of racial discrimination.
Moves to discuss wider equalities issues will potentially dilute the race equality debate
Work that is being carried out to achieve race equality has already or is under threat of losing funding

Disadvantage and Discrimination

ROTA research has identified that there is a need to be clear around the distinction between discrimination and disadvantage. The two are linked and inter-related and act as a cause and consequence of one another. However, they are different. It is important to be clear about;

Disadvantage that occurs as a result of discrimination

and

Discrimination that occurs as a result of disadvantage

The draft strategy identifies occasions where class, socio-economic status or other equality concerns such as disability, gender or age can be dominant drivers of disadvantage. It is important to be able to address where multiple-discrimination or multiple-disadvantage occurs and legislation such as the Single Equality Bill (see below) creates the potential framework to develop this.

When a person faces racial discrimination they may become disadvantaged, for example, they may have lower attainment at GCSE level. However, tackling this disadvantage by supporting the student is separate to tackling the discrimination in the first place, be that examining teaching methods, the tiering systems or the national curriculum. **It is therefore important to avoid conflation of discrimination, disadvantage and deprivation within discussions on equality.**

It is crucial that a remit is sustained for specific work on race and ethnicity at a strategic, policy and at a service delivery level. It is crucial that at all these levels ideas are generated from the grass roots up and reflect the concerns of the communities and groups who represent them. This will require work with cross-equalities groups, for example, BAME women's groups, or BAME Lesbian, Gay, Bisexual and Transgendered groups, as well as BAME specific work. It would be detrimental to focus on race in a silo without considering where they intersect with other issues of disadvantage, discrimination or deprivation. Only taking a 'mainstream' approach will always be limited by capacity, resource and expertise to meet *all* diverse needs. This level of specialist expertise should always have its place in delivering services, infrastructure and research, and any strategy to address race inequality should support this. Such support would not excuse mainstream services from offering inclusive services, and every effort should be made to monitor all policy and service delivery to ensure that it meets the requirements of the current duties on race and the forthcoming single duty.

Socio Economic Duty

The CLG discussion paper poses a question about disentangling the role that race and ethnicity play in driving disadvantage from other factors such as socio economic status. This issue is a particularly salient one given the new proposed Socio Economic Duty. ROTA supports this important positive step, as this allows for targeted support and policies that examine unequal life outcomes which will identify the greatest need.

ROTA recognises that poverty may be both a cause and a consequence of discrimination. In principle, therefore, we welcome the proposal for a socio economic duty. Further, we are aware that disadvantage based on opportunity can be related to circumstances such as birth, locality, class and community.

There is a fear however that the introduction of socioeconomic disadvantage into equality legislation without careful analysis and consideration may allow public authorities to use 'socioeconomic' factors to divert their focus from the disadvantages that are primarily linked to other factors such as race.

This is why it is important to disentangle issues of race and socio-economic status. Somebody can be discriminated against on the grounds of race even when they do not have a lower socio-economic status. If one takes GCSE attainment as an example; boys from Caribbean and Mixed Black backgrounds have a lower average attainment level regardless of their socio-economic status². White boys who are of lower-economic status have low attainment but the same cannot be said of white boys from all socio-economic groups. For this reason there is a need to be clear about what is causing the disadvantage and tackle that.

It is important to note also that socio-economic status can lead to disadvantage as much as racial discrimination – for example, both poorer groups and BAME groups find it harder to navigate the British education system and as a result often attend schools with restricted budgets or the threat of closure. These difficulties could potentially lead to unequal educational attainment. However, providing services for groups with low socio-economic status, and targeting policy at deprivation will not capture all BAME communities/individuals and will not tackle the root causes of unequal outcomes for many BAME groups, therefore a two pronged approach should be adopted to take account of both the socio-economic and race factors.

ROTA is concerned about the potential lack of prescription for the proposed new socio-economic duty, given that the concepts of race, gender and disability equality are familiar concepts and there is still significant inaction on the part of public authorities in implementing the equality duties. It is ROTA's view that tackling socioeconomic disadvantage should already be a fundamental role of Government and public authorities at every level. If Parliament should agree to make this a statutory duty on certain public authorities then detailed guidance and examples must be made available

² The Equalities Review : Fairness and Freedom: The Final Report of the Equalities Review (CLG 2007)

to these public authorities and guidance must set out the most appropriate methods of conducting research and risk assessments.

Single Equality Bill- Awareness and Confidence

Race specific legislation has worked to ensure that race retains a distinct profile when working with wider equalities issues. Any Race Strategy from the CLG must be mindful of the implications of new legislation on both its' strategy work and wider. The inception of the new Equality Bill is an area which has raised concerns within BAME communities and government must work to ensure that there is no dilution of the gains made over the past 30 years in race legislation. In March 2009 ROTA along with key partners formed the Winning the Race Coalition (WTR)³. The focus of the coalitions is primarily on race equality and the discrimination faced by BAME groups. However, the coalition also aims to make the argument for cross-equality and human rights issues where appropriate. The Coalition's objectives are underpinned by the following principles:

The new Act should strengthen existing equality legislation and provide consistent, clear and enforceable standards that are user friendly and accessible.

Acknowledge persistent inequalities, and enable victims to have easily accessible remedies through fair, inexpensive and expeditious procedures.

Acknowledge that to achieve equality and eliminate discrimination there needs to be a holistic approach that takes into consideration the different roles of public, private and third sector organisations, and the support needed by those working in these three different environments.

Any successful strategy, policy or legislation must have buy in from the people it will directly affect. The BAME and equalities third sector do not feel that they have been adequately engaged in the process of the formation of the Bill. ROTA collected evidence at the HEAR Working for Equalities event in March⁴ and identified that there remained low levels of awareness and a sense of suspicion around the new proposed legislation. ROTA welcomes the CLG's approach to engagement with communities through the national road-shows, consultation and use of the be-utd website and would urge the CLG to support the Coalition to do the same in relation to the Bill. The coalition proposes to play a key role in helping to address the problems of engagement and awareness. The proposed work of the coalition is split into two phases focussing on the BAME Third sector. The first phase covers the publishing of the Bill, its discussion in the two Houses and its passing. The second covers its implementation. During the first phase, the coalition's activities will focus on awareness raising and confidence building. During the second phase, the sector

³ The Winning The Race coalition set up by ROTA is a national coalition of Third Sector bodies to highlight some areas of concern in relation to the Single Equality Bill. The focus is primarily on race equality and the discrimination faced by Black, Asian and minority ethnic (BAME) groups. However, the coalition's creation aims to make the argument for cross-equality and human rights issues where appropriate. The Coalition is made up of 36 organisations including Voice 4 Change England, the Runnymede Trust, ACEVO, The Fawcett Society, NAVCA and Imkaan. See <http://www.rota.org.uk/pages/WTRC.aspx> for further details.

⁴ HEAR Working For Equalities: Post Conference Report (ROTA 2009)

and the communities ROTA and coalition members serve will need to be assisted in developing a feeling of ownership over the Act. The Bill's adoption of a new regulatory system of enforcement requires civic participation and engagement. Although individual claims and cases will play a critical part in shifting the existing culture, the Bill assumes that society (including BAME and other equality groups) will fully participate and engage in its development and enforcement.

The CLG Race Strategy should also involve further consultation at the various stages of its development to ensure that BAME communities feel engaged with the process and develop ownership over the strategy.

Public Sector Single Duty

An effective single duty will ensure that race will continue to maintain a distinct profile in wider equalities issues in all public authorities such as the CLG and the risk of an ineffective duty is an area of concern for the WTR coalition. This is particularly true for race equality due to its long history and rich case law. The Stephen Lawrence Inquiry saw a qualitative step forward in recognition of the reality of institutional discrimination. As a result, the Race Relations Amendment Act 2000 introduced the race equality duty on all public authorities and services. The WTR Coalitions concerns regarding particular aspects of the Single Duty are discussed in section three.

The Single Equality Bill states that in practice the duty will require public bodies to consider how their policies, programmes and services affect different disadvantaged groups in the community. This is significant in keeping race equality as distinct and is welcomed by the BAME Third Sector given the disproportionate negative impact that some policies, programmes and services have on the BAME groups that they serve. Under this new duty, there will need to be a consideration of the potential detrimental impact that some services may have on BAME communities as well as to assess whether they meet the needs of BAME communities.

The CLG should work with the WTR coalition to ensure that there is no dilution of the race duty and the new legislation is strengthened further to so that components parts of the CLG Race Strategy can be adopted by public authorities.

Policy priorities

Which are the priority areas for Government action on race equality?
Should we expand our policy areas? If we do, do we risks diluting the focus on the five public service areas mentioned above?

The CLG Race Discussion document highlights the range of unequal outcomes for BAME communities across the range of social policy areas. The unequal outcomes for BAME communities across these areas must first be addressed before the areas are expanded. ROTA's consultation with the BAME Third Sector⁵ at the beginning of 2009 highlighted the following specific concerns in policy areas that were identified as the most salient for the sector and the BAME communities that they serve:

⁵ BASIS Interim Report: Policy Priorities for the BAME Third Sector (ROTA 2009)

Health Inequalities

As exemplified in the CLG Race Discussion document, in comparison to the general population, ethnic minorities have considerably lower health outcomes, though there is significant variation between different groups in terms of health status and disease patterns. ROTA research has identified the following as areas that need to be addressed;

1. The lack of access to health services including the decreasing use of interpretation and translation services and a lack of provision for culturally sensitive services is a significant issue for a number of BAME organisations.
2. Over 60% of organisations surveyed in the ROTA report⁶ who identified health as a priority made specific reference to the disproportionate number of Black men under mental health services.
3. Issues around sexual health and drug addictions were identified in ROTA research as areas of importance for BAME communities, particularly in support of the services offered by local community groups who meet the needs of those who may not seek treatment through generic services.

Mental health is an area which consistently comes up as an area of concern in BAME communities and requires attention because of the patterns of disproportionality which are evident in mental health. Admission rates of black people into the mental health system are at least 3 times higher than for all other groups. Young black men usually enter the psychiatric system via referrals made by prison establishments, in fact BAME groups are 40%⁷ more likely to enter mental health services through a criminal justice system(CJS) gateway, and 44% are more likely to be detained under the Mental Health Act than their white counterparts.

Lord Bradley's recent review of people with mental health problems or learning difficulties in the CJS highlighted that "People from BME communities with mental health problems represent about 10% of the UK BME population, but in prison this rises to approximately 20%"⁸. Better delivery of mental health provision needs to be given to BAME offenders so that it does not discriminate against them because of their race

Education

Despite the gradual decrease in the educational achievement gap between various black and minority ethnic pupil groups and their white British counterparts, underachievement continues to affect pupils from specific minority ethnic backgrounds. ROTA research⁹ has found that;

1. A key area of concern in the BAME Third Sector in regards to education is access to the education system; specifically regarding applying to schools or appealing against exclusion.

⁶ Ibid.

⁷ CLINKS, National Body of Black Prisoners Support Group (NBBPSG), Race on the Agenda (ROTA), NACRO, Sainsbury's Centre for Mental Health, Less Equal Than Others: Ethnic minorities and the criminal justice system (Race For Justice 2009)

⁸ The Bradley Report -

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694

⁹ BASIS Interim Report: Policy Priorities for the BAME Third Sector (ROTA 2009)

2. There is a continued concern regarding levels of attainment for some BAME groups.
3. The links between education and employment prospects is an area that needs to be addressed as the experience of BAME communities is such that good academic results do not always secure work for BAME groups, and that poor academic results compounded with discrimination in the workplace meant that education was crucial in acting as an influence on all other aspects of an individual's life chances.
4. ROTA's research has identified that Refugee and Asylum seeker organisations have concerns over the issue of qualifications, training and skills from abroad that were not transferable for employment in the UK and the impact that this has on those communities' access to employment.

Criminal Justice System

ROTA along with CLINKS, the National Body of Black Prisoners Support Group (NBBPSG), nacro, Sainsbury's Centre for Mental Health as well over 100 voluntary sector organisations collaborated to form the 'Race for Justice' campaign and supporting publication - '*Less Equal Than Others – Ethnic minorities and the criminal justice system*'. The report highlights the discrimination and disproportionality against BAME men and women who find their way into the criminal justice system(CJS). Also, the Transformative Justice Project¹⁰ (TJP) which builds on ROTA's experience working with criminal and restorative justice policies and practices identified gaps within practices and policies that target highly victimisation level groups particularly from the BAME sector. This came from the recommendations from ROTA 'Restoring Relations Project: Addressing Hate Crime through Restorative Justice', which highlighted the need to establish a cross-sector multi-agency forum that providing expertise and coordination¹¹. All of ROTA's work in this area confirms the continued and urgent need to address the persistent racial inequalities that persist. There is a need for the CLG to take on the following recommendations identified in the Race For Justice Report and ROTA's research into reducing reoffending in their policies to begin to redress the inequalities that pervade in this area;

1. There is a need for Criminal justice agencies must be more accountable, the Equality and Human Rights Commission and the Government's new Equalities Office should introduce targets to reduce disproportionality at each stage of the criminal justice process
2. The Criminal Justice Group (part of the Ministry of Justice) should establish a baseline of current funding for the BAME Third sector and other organisations working with BME offenders. It should set and monitor targets to ensure that these groups are adequately funded.

¹⁰ The TJP Forum operates to improve the scope for multi-agency partnership work through building more consistent links and increasing the opportunities for statutory agencies and third sector organisations to engage. The TJP Forum will continuously share information on areas of best practice, market and increase awareness of best practice throughout other networks and raise the profile of successful alternative dispute mechanisms. See <http://www.rota.org.uk/pages/TJPforum.aspx> for further details

¹¹ ROTA Restoring Relationships: Addressing Hate Crime Through Restorative Justice (ROTA 2008)

3. The CLG should identify and disseminate good practice by the BAME voluntary sector. This will help to ensure that local and national government funding is effective in areas of greatest deprivation and highest crime.
4. Court diversion schemes to support BAME offenders with mental health and drug problems should be properly resourced and appropriate in order to reduce pressure on prison health services, ensure better care and rehabilitation.
5. Supporting BAME ex-offenders into employment into employment and appropriate training should be a priority to support effective resettlement after custody. ROTA's research into the availability of specialist services for BAME offenders¹² identified the value and need for such provision to reduce re-offending.
6. BAME offenders, former offenders and their families – the users of CJS services – should be involved and consulted with by CJS agencies to help make provision more effective and appropriate.
7. The ROTA Transformative Justice Forum operates to improve the scope for multi-agency partnership work through building more consistent links and increasing the opportunities for statutory agencies and third sector organisations to engage. This should be replicated to cover different areas across the criminal justice system.

The CLG Race Discussion document highlights PSA 24 (Deliver a more effective, transparent and responsive Criminal Justice System for victims and the public) and the fact that “Perceptions of fair treatment among black and minority ethnic communities have improved but the Government still needs to improve understanding of, and address, race disproportionality in the CJS”¹³. Despite Local Criminal Justice Boards (LCJBs) having to monitor ethnic minority data to collate a Minimum Data Set (MDS) the analysis and use of this data to determine priorities and actions is sporadic. ROTA would like to see a need to identify good practice in local areas where this data is being used to effectively tackle issues of disproportionality and then distribute these more widely. ROTA welcomes the Minimum Data Set (MDS) but would want to ensure that the data collected from this is transparent and readily accessible so that LCJBs can be held to account by the public and other stakeholders. There is a need for greater analysis of this data at a local level which is essential if the government is to deliver on PSA 24's indicator 4 on “Understanding and addressing race disproportionality at key stages in the CJS”. The PSA goes on to state that this indicator will help “develop a better understanding of the scale and causes of under- and over-representation of people from ethnic minorities in the CJS”. Without robust analysis of data at a local level tackling the root causes of ongoing disproportionality, this will remain the case.

Housing

Overcrowding rates for ethnic minorities continue to persist. Overcrowding rates were the highest for Bangladeshis at 27%, twenty-five percentage points more than

¹² Dhaliwal, P & Salla, A: Effective Commissioning to Reduce Re-offending: A BAME Case Study (ROTA 2008)

¹³ PSA 24 - Deliver a more effective, transparent and responsive Criminal Justice System for victims and the public - http://www.hm-treasury.gov.uk/d/pbr_csr07_psa24.pdf

the White population¹⁴. ROTA's report 'The Visible and Hidden Dimensions of London's Homelessness: A Black, Asian and Minority Ethnic Account' highlighted the experiences of service provision for BAME homeless individuals and the relationship between BAME and mainstream homelessness organisations. BAME households are more than twice as likely as white British households to become homeless, and more than six times as likely to live in overcrowded accommodation. Logic therefore suggests that BAME groups should be equally overrepresented among those accessing housing advice- this however is not the reality. One of the recommendations of the ROTA Homelessness report was the need for specialised, culturally accessible advice¹⁵ in order to reach out to those from BAME communities who found themselves with housing difficulties. ROTA's research into policy priorities with the BAME Third Sector¹⁶ identified the following concerns in regards to housing;

1. BAME communities are concerned with the safety and quality of housing, social housing in particular.
2. There are concerns in regards to the impact of the 2012 Olympics on housing for BAME communities in East London.
3. BAME groups highlighted issues around overcrowding in housing for certain communities and a feeling that service provision was not available as this was deemed the fault of communities themselves.
4. The issues around housing traveller communities was highlighted, given the limited availability of traveller sites and the negative stereotypes associated with their provision.

Employment

Unemployment rates for BAME groups are generally higher than for the white population. In much of the public sector BAME groups are well represented, however in a number of fields there remains a concern that the workforce is unrepresentative of the wider community. In particular in a number of sub-sectors, whilst overall employment rates are representative, there is often a bias towards BAME employment in lower level jobs. At the same time there is a growing recognition that delivery of public services can be improved if the workforce better reflects the community it serves.

- For BAME women's groups, concerns were raised regarding discrimination in the workplace and working environments, accessing employment opportunities and barriers to progression.
- In regards to migrant workers, organisations highlighted confusion about who was able to work, and a need for clarity from policy makers about the Home Office's stance on the issue. Difficulty in accessing employment as well as the negative stereotypes associated with immigrant workers was also highlighted.
- Given the earlier identification of Education as a social policy priority ROTA's research has highlighted that many identified it as being a link to future employment and the impact that discrimination in the former had on the

¹⁴Department for Communities and Local Government, Race Equality in Public Services Two Years On: A Progress Report (London:Crown Copyright, 2007):

<http://www.communities.gov.uk/documents/communities/pdf/improving-2yearson-annex.pdf>.

¹⁵ ROTA: The Visible and Hidden Dimensions of London's Homelessness: A Black, Asian and Minority Ethnic Account (ROTA 2007)

¹⁶ ROTA BASIS Interim Report: Policy Priorities for the BAME Third Sector (ROTA 2009)

experiences and access to the latter.

Children and Young People

Given ROTA's work on education and serious youth violence through the Building Bridges Project (BBP) and Female Voices in Violence (FVV) ROTA highlighted the need for children and young people's services be a public service priority. Given the disproportionate BAME homicide victims that are the result of gangs and serious group offending in London, it is crucial to understand whether the impact of the violence is the same nationally. The findings of ROTA's Building Bridges Project emphasised the need to take proactive and preventative, rather than purely reactive and punitive, steps in order to see a real reduction in violent crime amongst young people¹⁷

ROTA's ongoing study into women affected by serious youth violence has identified concerns into;

- The way girls and women view themselves and one another
- The types of boys and men they find attractive
- Roles and risks involved when associating with gang members
- The impact of gang activity on mothers and sister of gang members
- Female Offending as part of gang activity
- The use of sexual exploitation and sexual violence in gang activity

It is crucial that given many BAME young people who are most at risk may not benefit from changes in education policy necessarily, and they should be supported in more preventative ways rather than access services via the criminal justice system. Children and Young People's services also cuts across a number of policy areas, and it is often the case that the voice of the services users, as they are children are not always taken into account.

The role of the Public and Private sectors in prioritising race equality

How can we help and encourage the public sector, such as local councils, criminal justice agencies and NHS Trust to prioritise their work on race equality?

How can we best work with the private sector to address ethnic minority employment issues?

The role of the public and private sectors in prioritising race equality will be best achieved through a combination of approaches including statutory legislation, national indicators, partnership working, working with auditors and commissioners and building a business cases for equality.

Definition of a "Public Authority"

It is important that the new public sector duty consider each equality strand in a way that best suits its specific needs. The 2007 Green Paper on the Single Equality Bill proposed

¹⁷ ROTA Building Bridges Project: A report by the young people of London, facilitated by ROTA providing evidence based recommendations to tackle gangs and the use of weapons (ROTA 2008)

that public authorities be required to set priority equality objectives – and take ‘*proportionate*¹⁸’ action to achieve these. This would be instead of embedding equality in all their policies: at the moment, public authorities have to take equality into account in everything they do. While it is important to have clear objectives, these must be in addition to the current requirement on public authorities to consider equality in all their work. Secondly, the changes would remove the clear obligation to take steps such as consulting those who will be affected, use evidence, monitor, assess the impact of policies and actions. Public authorities would no longer be required to produce three-year schemes with detailed requirements. The DLR Green Paper on the Single Equality Bill stated: ‘*Our proposed approach would therefore mean that the law would no longer specifically require, for example, employment monitoring of racial groups?*’ Without such data collection it will be impossible to judge progress in employment equality, for example. **Race Equality Impact Assessments are a vital tool in identifying whether a public authority is compliant with their obligations under the Duty.** The new proposals would also remove the legal requirement to consult and involve people. All this would be replaced with ‘principles’ to ‘*underpin effective performance of public sector duties*’. This far less specific duty will also be much harder to enforce.

The Act should clearly define what constitutes a public authority covering all bodies (including private and third sector organisations) that provide public services . It is important that the Acts builds upon and use the existing jurisprudence as set out in the Race Relation Amendment Act in regards to the definition of a public authority and the Human Rights Act definition of a public authority. This is necessary to avoid narrow interpretations, which will result in victims of discrimination being left vulnerable whilst new case law is established . ROTA would strongly suggest that the definition as set out in ‘SCHEDULE 1A Bodies and other persons subject to general statutory duty’ in the Race Relations (Amendment) Act 2000 is applied to the Single Equality Act and that the lessons from the implementation of the Human Rights Act are considered.

Remedying Discrimination in the Private Sector through Procurement

The new Equality Bill is most effective tool and the most important opportunity that is available to remedy discrimination in the private sector. This is one of the areas of concern being addressed by the Winning the Race Coalition. Over £175 billion is spent each year in contracts for works, goods or services. This represents approximately one-third of total public expenditure¹⁹. It is important to ensure that employees in the private and third sector do not receive less protection than those in the public sector.

The current equality legislative framework has not provided consistency and a clear picture on the consideration and implementation of equality standards by private and Third sector contractors who have been procured to deliver public services. There is evidence to suggest that despite the existing guidance, there is inconsistency in its implementation. This is not only seen across different public bodies, but also within a single body. We also have evidence to suggest that some public authorities are ignoring equality throughout the procurement process including management, planning, performance and monitoring.

¹⁸ Discrimination Law Review - A Framework for a Fairer Future: Proposals for a Single Equality Bill for Great Britain (CLG 2007)

¹⁹ ROTA Winning the Race: The Final Stages of the Equality Bill (ROTA 2009)

In the Equality Bill published in April 2009, **no private sector duty was proposed**, but instead the Government aims to use *public procurement* to encourage greater transparency. Public sector purchasing will be used to improve transparency in the private sector. 80% of people are employed in the private sector and 30% of British companies are contracted to the public sector. The existing equality duties cover public procurement, the new equality duty is to clarify and strengthen existing requirements and give a greater focus on increasing transparency.

The Equality Bill states that public bodies can use procurement to drive equality (Schedule 26 of the Bill²⁰, amending Local Government Act 1988). It enables Ministers to make regulations setting out how public bodies should go about doing so (clause 149(2)). ROTA will be responding to the consultation over summer 2009 about the specific duties which will underpin the new equality duty to represent the views of BAME communities.

The Government stated in Summer 2008 that it will work with others to develop a 'kite-mark' scheme for employers who are transparent about reporting their progress on equality, as a further means to encourage greater openness in the private sector. This proposal is not mentioned in the April 2009 announcements on the Equality Bill.

As we enter a commissioning environment, it is crucial that those commissioned to carry out work deliver on equality. The positive duty included in the Race Relations (Amendment) Act should now be extended to private and Third Sector organisations either through legislation or non-statutory guidance. Furthermore, the bill highlights that there are stark inequalities in specific industries such as 'in the construction industry, 2.5% of the workers are from BAME groups, whereas the average workforce as a whole is 8%.

ROTA would call for a **statutory obligation** placing anti-discrimination measures at the heart of the function of public sector procurement. The 2007 Green Paper on the Single Equality Bill rejected this saying that: *'the CBI agrees that this [equality] can be achieved through the development of clear, consistent and practical guidance'*. This route has failed. There has already been a range of such guidance and policy initiatives such as: the National Procurement Strategy for Local Government, the Commission for Racial Equality's Guide on Race Equality in Procurement and the Equalities Standard for Local Government. Despite these initiatives, Communities and Local Government's 'Two Years On' report on the National Procurement Strategy for Local Government identified that in 2004 only 34 per cent of authorities specifically addressed equality and diversity in their procurement strategies, and in 2005 only 40 per cent of authorities specifically addressed equality and diversity with examples or targets. In other words, these voluntary schemes have not produced the change in public procurement that is required.

Positive equality duties in the private sector have been rejected as entailing a *'significant regulatory burden'*²¹. Such duties have worked well in Northern Ireland. Given the difference in scale between Northern Ireland and Britain, the detailed content of duties may well differ, but the idea that encouragement to good practice will work if unaccompanied by the incentive of legal backing is wishful thinking.

²⁰ Equality Bill 2009 see www.equalities.gov.uk

²¹ Discrimination Law Review - A Framework for a Fairer Future: Proposals for a Single Equality Bill for Great Britain (CLG 2007)

Equality monitoring and positive duties are vitally important steps towards making workforces more representative of the entire population – addressing the under-representation of sectors of the population in senior jobs, professions, and sectors, and tackling inequality in pay and employment.

Monitoring and Enforcement

Appropriate targeted enforcement action must be taken where public bodies are found wavering in their equalities duties- an area that WTR Coalition are concerned about in regards to the new Single Equality Bill. Anti-discrimination legislation is only as good as the enforcement that accompanies it. ROTA and other stakeholders have made clear that this is a major area of concern yet unless this is rethought, the Single Equality Act will not lead to the improvements in outcome that are needed for millions of people. The CLG should work with the Auditors such as the Healthcare Commission, Audit Commission, the Commission for Social Care Inspection and OFSTED to ensure that effective enforcement and monitoring measures are at the heart of any strategies/policies that they put in place. There is value in engaging the relevant inspectorates and regulators to encourage public authorities to prioritise equalities in their service delivery, through:

- the inspection process – where a common approach would be desirable;
- providing guidance, self-assessment tools and examples of best practice;
- undertaking evidence-based research;
- highlighting poor practice;
- identifying best practice;
- measuring change;
- pursuing a systematic picture of activity and outcomes that are informed by human rights thinking;
- providing an independent overview of service delivery through existing mechanisms without adding additional regulatory burdens.

National Indicators

ROTA would encourage working with the existing national indicators relating to local targets around equality. It is important to note that there are discrepancies in maintaining focus in particular targets which should be examined, as demonstrated earlier in regards to PSA 24. PSA 15 outlines governments commitment to address disadvantage relating to an individuals gender, race, age, sexual orientation, religion or belief but the related national indicators lose the specific focus on race. ROTA would recommend a specific indicator relating to race to ensure that race equality is not diluted into a broad focus and specific inequalities are addressed.

Partnership working

There should be an encouragement of working with specialist third sector organisations who often provide similar services or diversionary activities at a grass roots level by rewarding partnership working. The business case can be made that intelligence of what happens within a community is best found in such groups and if such partnership working is fostered public services will become fit for purpose. Research carried out at ROTA through the Restoring Relationships Project identified this multi-agency, cross sector approach to working as vital in coordinating links and communications channels between statutory, public and private sector agencies²². **The ROTA Transformative Justice Forum is a good example of the value of taking a multi-agency approach to working and we would suggest that the CLG use the same model for the development of and duration on the race strategy.**

Representation

There is a need for greater representation on local partnerships bodies such as LSP's which needs to be addressed. Representation in a broader sense is also important to consider as the Single Equality Bill presents government with an opportunity to make key areas representative of the multi-racial populations of the UK. ROTA recommends that the Act aligns domestic legislation with EU law and in particular the Equality Framework Directive (2000/78/EC) and European Race Directive (2000/43/EC). The directives allow positive action to be undertaken, and do not regard it as infringing the principle of equal treatment. They cover access to employment, training or promotion, and are relevant to public, private and Third sector organisations. The Bill states that in order 'to end inequality you have to take positive action to redress disadvantage as well as tackle discrimination'. Therefore, 'the Bill will extend positive action so that employers can take under-representation into account when selecting between two equally qualified candidates'. What this actually does is to allow employers to use positive action but there is 'no strict rule that this must be done in all cases'²³.

The EU Directives leave open the possibility for states to adopt "specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin"²⁴ (Art. 5). Under the test of indirect discrimination, it should be possible for states to adopt measures which give preference to members of minority groups which have historically been the victims of discrimination, if (a) such measures have the legitimate aim of reducing *de facto* inequalities which stem from past discriminatory practices, and (b) the nature and extent of the present inequalities make the preferential measure proportionate. What is currently proposed is much more limited, for example, than the targets on women in senior positions introduced in Norway and Spain for example, or provisions in place in Northern Ireland.

The clear danger is that weak legislation may fail to address the levels of under-representation in key services, employment and public life. If organisations are unclear as to what steps are permitted under law many may not risk doing anything, and many more will have little incentive to do so.

The Equality Bill states has proposed to use women-only shortlists in selecting parliamentary candidates.. However, they will not legislate to allow ethnic minority

²² ROTA Restoring Relationships: Addressing Hate Crime Through Restorative Justice (ROTA 2008)

²³ ROTA Winning the Race: The Final Stages of the Equality Bill (ROTA 2009)

²⁴ *ibid*

shortlists and instead will pursue non-legislative measures to increase the number of ethnic minority elected representative in both Parliament and local councils. It has not been made clear as to what these non-legislative measures will be. Also it is not clear why this decision has been made apart from the statement that there is not consensus that a shortlist would be the best way forward. The statistics offered in the DLR Green Paper²⁵ state that 19% of MP's are women while BAME individuals only represent 2.3% of all MP's. It is evident from this that concrete action is needed to address this disproportionality.

The Role of the Third Sector and BAME communities

What role does the voluntary and community sector have to play in prioritising race equality at a local level?
How can we encourage more people from BAME backgrounds to get involved in public life and in volunteering?
What are the main barriers to civic participation and representation that need to be addressed?

The Value of Specialist Services

ROTA research has identified that frontline equality organisations are the only ones that can *meaningfully* engage isolated communities and bring them to a position where they can take part in, and shape wider public and social life²⁶. The BAME Third sector delivers a range of activities and often life-saving services including crises and longer-term accommodation, counselling, advice and representation. The 2008 HEAR report 'Gaps and Solutions: Supporting London's Equality Sectors' identified that specialist equality organisations work in all fields such as sustainable development, health, culture, criminal justice, employment, education and transport. They play a key role and have invaluable experience in responding to inequality by:

- Meeting specialist need: in providing services to meet specific needs that mainstream service providers are either unaware of, or find difficult to understand and often do not address.
- Strengthening community cohesion: by building the confidence of people such as refugees from the most marginalised communities, frontline equalities groups enable them to feel strong enough to mix with others communities.
- The group's staff and volunteers may also become well known and are well positioned to mediate tensions that may arise between communities;
- Implementing Government policies: government relies at times on frontline equality organisations to help deliver, for example, its human rights, equality and community cohesion agendas.
- Providing employment and volunteering opportunities: the Learning and Skills Council has reported that the third sector in general employs higher proportions of BAME people, women, disabled people and people with long-term illness and graduates.
- Employment and volunteering opportunities provided by equalities groups help people from the most marginalised communities move into the formal economy or from voluntary to paid employment.

²⁵ Discrimination Law Review - A Framework for a Fairer Future: Proposals for a Single Equality Bill for Great Britain (CLG 2007)

²⁶ HEAR, Gaps and Solutions: Supporting London's Equalities Sectors (ROTA 2008)

Many BAME and equality groups can work in isolation and are not always involved in the decision making and consultation processes which are accessed by more mainstream organisations and so there is a need to ensure that there is a strategic and co-ordinated way to bring these issues to the attention of key stakeholders.

Under-funding has always an issue in the BAME Third Sector and this situation is being exacerbated by both the move towards commissioning and the economic downturn. ROTA research has shown that whilst historically, Race Equality Council's(REC) played an integral role in delivering on race issues at a local level, their position is becoming increasingly under threat and few are still operational and those who still exist are at risk of losing funding²⁷ In an environment of mainstreaming equalities, other BAME groups are also facing the same hurdles; often being placed in a Catch 22 situation of expanding their remit and services to meet more generic requirements and secure funding, but losing their essence and purpose in the process and as such, losing funding on those grounds. This situation must be addressed to ensure that that the communities to which they have a reach are not left without accessible service provision.

Volunteering and Community Empowerment

Much of the BAME third sector is run by volunteers and it is important that this is recognised at a local, regional and national level, applauded, supported and encouraged to go further. This can be done by supporting those organisations that provide opportunities for volunteering and helping to ensure that at a time of high unemployment, volunteering should be encouraged as an alternative during the economic downturn. In terms of barriers to volunteering, there is a need for more awareness raising in communities around formal channels of volunteering and also issues around social exclusion affect some individuals opportunities and willingness to be more involved in public life and volunteering.

ROTA would suggest that demonstrating the positive impact of engagement and showing that it is worthwhile is of value to under-represented groups. If BAME organisations are included in the process then it will illustrate to communities that they too can be involved, and that such involvement is valued and taken into account.

Civic participation and representation can also be addressed using positive action measures, as discussed earlier in relation to the Equality Bill.

The Impact of the Recession and Economic Downturn

How do we ensure that people from BAME communities have the skills to fully participate in the post downturn economy?

What should the government do to ensure that the gains in BAME employment, and the narrowing of the employment gap are not reversed during a recession.

The United Kingdom in 2009 is in the throes of a recession. Unemployment rates are currently at 2.2 million, the highest levels since 1997 according to the Office for National Statistics, with some economists predicting levels to reach 3.3 million by early 2011. The effects of a recession permeate through all aspects of the economy and lead to an increase in demand on the Third Sector with people looking for advice in areas such as debt and employment.

²⁷ ROTA BASIS Interim Report: Policy Priorities for the BAME Third Sector (ROTA 2009)

ROTA's forthcoming evidence based report, 'The Impact of the Recession and Economic Downturn on the BAME Third Sector'²⁸ highlights the ways in the localised community groups that serve the most disadvantaged members of the community, the BAME Third Sector have been impacted by the present recession. The reason for the special focus on the BAME Third sector was because the impact of equality organisations can be significant because they are led by, and for, those with direct experience of inequality and discrimination. They empower and fully respond to needs because they understand and empathise with service users' experiences. By supporting individuals to become aware that their experiences of inequality and discrimination are not isolated they enable mutual support. They are critical to achieving equality of opportunity, which depends on more than meeting needs, and crucially on the opportunity to take action and have a collective voice.

The dominant issues emerging from the study were;

1. Widespread cuts in funding and reduced incomes
2. The increased dependency of BAME communities on the services of BAME Third Sector organisations
3. BAME Organisations being forced to introduce new areas of work to cope with the needs of communities

Some of the new areas of work that are having to be catered for by BAME Third Sector organisations are debt and employment advice and skills training. There is also an increased need to cater to the needs of the newer emerging migrant and refugee communities. Service users are still finding that their needs are not always met by mainstream services hence the increase demand in the BAME Third Sector.

The CLG should take on the general recommendations that have emerged from the report;

- Funders (statutory and public) need to standardise their procedure for cutting grants and funds, making it more transparent and equitable during the recession.
- Any new and emerging areas of funds (e.g. signposting individuals) introduced as a result of the economic downturn, need to be distributed to both generic and BAME third sector organisations and groups equally.
- BAME organisations and groups need well supported sub-regional networks through which their voices will be heard, to ensure funding and other concerns are represented to inform external London developmental and policy matters.
- There needs to be clarity and readily available information from both the statutory and public London funders on how equality and diversity specific projects are funded. These also need to be well publicised and distributed through agencies that London BAME third sector organisations and groups have access to.
- Some of the recent Government bailout plans targeted at the Third Sector to weather the recession should be ring-fenced for BAME and equalities groups to improve their structures to cater to minority communities.
- Similarly, London's BAME Third sector should be given ownership of their infrastructure needs and other development through existing BAME networks.
- Infrastructure support to service delivery organisations should meet their core needs and allow them to focus on directly serving communities. They should work directly with BAME organisations to assess their needs and ensure that they meet these needs.
- There is a need to continue to fund BME organisations that support excluded communities at local and sub-regional level, recognising the value that these

²⁸ Contact Pavan Dhaliwal at pavan@rota.org.uk for further details ahead of the report publication on June 30th 2009.

organisations have in developing BAME groups, advocating on their behalf and providing them with a voice against discrimination and disadvantage.

- BAME regional networks are uniquely placed to help achieve the racial equality vision inherent in the BME Compact Code, to equip frontline BME organisations to deliver for their communities, and in so doing, to create a more cohesive and inclusive society. As such they require continued core support from government.
- There is a need to increase the coordination of available support – both specialist and generalist – at regional, sub-regional and local levels, in order to improve the efficiency of capacity building of the sector, in particular with respect to fundraising in the current context, and influence and participation in decision-making.
- Policy that is hindering the work of the BAME third sector, at a time when their workload is increasing, needs to take into consideration the impact of the recession on BAME communities

What does ‘success’ look like? And how do we measure success?

The long term vision for race equality that the CLG is proposing should be set against narrowing the gaps as set out in the ‘Momentum Measures’ in the Equalities Review²⁹. In regards to the three year strategy, the following indicators should be used as a measure for success;

- All government departments and public authorities will have specific race equality strategies to prioritise tackling the continued inequalities and discrimination experienced by BAME communities.
- The CLG Race Strategy should have set targets to address race inequality against the timelines as set out in the Equalities Review
- By 2011 all public services should have race specific PSA targets to be actively working to address race inequality. This will include not only monitoring to targets to address the disproportionality in areas such as the criminal justice system
- The CLG will have worked to ensure that the Equality Bill is strengthened to ensure that race equality is achieved through the single duty through measures such as race impact assessments.
- Procurement of services by the government and public authorities should be subject to stringent and statutory equality standards
- The BAME Third Sector should be strengthened and well resourced to deliver services to those most in need in BAME communities, including funding infrastructure organisations at local and national levels.
- There should be a recognition by the CLG of the value of specialist service provision through support, funding and acknowledgement of the continuing need for such services for BAME communities.

²⁹ The Equalities Review : Fairness and Freedom: The Final Report of the Equalities Review (CLG 2007)

- BAME communities feel engaged and fully involved in the policies and practices in place that are working to achieve race equality.
- There is constant and transparent rounds of equality impact assessments which can be used as measures to meeting targets set.
- BAME representation is addressed through both legislative and non legislative measures ensuring that public bodies are representative of the communities that they serve.

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