

TACKLING INSTITUTIONAL RACISM: REALISING THE POTENTIAL OF EQUALITY BODIES



Tackling Institutional Racism: Realising the Potential of Equality Bodies is published by Equinet, European Network of Equality Bodies. Equinet brings together 47 organisations from across Europe which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

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EXECUTIVE SUMMARY



There has been increased visibility for, and growing acknowledgement of, institutional racism across the Member States over the recent period. This presents opportunities for action to tackle an issue that has been at the heart of driving and sustaining the inequalities and disadvantage experienced by racialised communities. Equinet, conscious of contribution of equality bodies in tackling this issue, has prepared this perspective to further enable and strengthen this work.

The European Commission emphasised the need to acknowledge structural racism and to address it in its Anti-Racism Action Plan 2020-2025. In moving beyond the individual level of racism, this concept of structural racism includes a focus on the institutional level of racism. Given their mandate and competences, it is at this institutional level that equality bodies have particular potential to intervene.

Institutional racism involves the failure of organisations to achieve outcomes for racialised communities on a par with the general population, due to the nature of their processes, attitudes, and behaviours. It is not a matter of intent, rather it is embedded in the culture and systems of organisations, only becoming visible in the detrimental outcomes that result for racialised people.

Equality bodies have taken up the challenge to address institutional racism across all of their functional areas. Under the promotion of equality and prevention of discrimination function, equality bodies have been engaged in:

- research to uncover and provide evidence on institutional racism, and initiatives to improve gathering and analysis of equality data;
- provision of guidance and support to organisations on good equality practice and systems, initiatives in relation to use of Artificial Intelligence, and supporting implementation of statutory equality duties;
- providing policy advice on addressing the issue, and on the ambition for and implementation of National Action Plans against Racism; and
- communication work, contributing to debate on the issue through securing public attention for the initiatives they have taken.

Under the support and litigation function, equality bodies have been engaged in:

- strategic litigation with an identified focus on institutional racism;
- support for, representation in, and taking cases in relation to institutional racism; and
- legal interventions in relation to institutional racism such as own initiative cases and amicus curiae interventions.

Under the decision-making function, equality bodies have been engaged in hearing,

deciding on, and making recommendations in cases of institutional racism

This work of equality bodies has been enabled by provision for statutory equality duties and by their engagement with civil society organisations representative of racialised communities. Equality bodies have faced barriers of failure those in positions of responsibility to acknowledge the issue, data gaps and absence of National Action Plans against Racism, and of lack of provision on the issue in equal treatment legislation, limitations in their powers, and lack of resources. The hidden and evolving nature of the issue, the intersectional dimensions to the issue, and the complexities of pursuing necessary cultural change all present challenges to equality bodies in this work.

Equality bodies could usefully strengthen their focus on and deepen their capacity in addressing institutional racism, particularly in focusing on institutional racism in their: research; good practice supports, including initiatives on Artificial Intelligence; policy advice on National Actions Plans against Racism; promoting cultural change through their communication work; and strategic litigation.

National and European level authorities could usefully strengthen equal treatment legislation to better address institutional racism; make provision for statutory equality duties; include a focus on institutional racism in National Action Plans against Racism; set and enforce standards for the digital sphere; protect the democratic space for civil society; and ensure adequate equality data systems. Specifically at the European level, legislation on standards for equality bodies could usefully be introduced.

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1 INTRODUCTION



The COVID-19 pandemic and the steps required for its management have shone a harsh light on the inequalities that persist across Europe, and, in particular, on the institutional structures and systems that maintain these. Alongside this, revelations of police violence against racialised communities and the protests mobilised in response, have focused public and political attention on the specific issue of institutional racism. This increased visibility for, and growing acknowledgement of, institutional racism offers an opportunity for new initiative to tackle an issue that has been at the heart of driving and sustaining the inequalities and disadvantage experienced by these communities.

Equinet, the European network of equality bodies, is conscious of the potential for equality bodies to make a particular and significant contribution to tackling institutional racism. This potential lies in the mandate and functions of equality bodies, and in their acknowledged role as “necessary and valuable institutions for social change”¹. **In developing this perspective, Equinet seeks to underline this potential of equality bodies, and to enable it to be fully realised in an effective contribution to meeting the significant challenges posed by institutional racism, and addressing its resultant inequalities.**

The perspective has been developed by Equinet’s policy formation working group, which met twice to specifically examine the issue, the work of equality bodies on this issue, and future directions for this work. It has been informed by a conference on the topic of tackling institutional racism, hosted in an online format by Equinet in December 2021. It has been strengthened by review of the Board of Equinet.

This perspective first introduces the issue of institutional racism, and its dynamics and impact. It then establishes the potential of equality bodies across their various functions to contribute to tackling institutional racism, identifying some exemplars of current work in this regard. It goes on to explore the enablers and barriers to equality bodies in realising their full potential in this work, and concludes with recommendations to enable this work to be further strengthened.

1 Ammer M., Crowley N., Liegl B., Holzleithner E., Wladasch K., Yesilkagit K., [Study on equality bodies set up under directives 2000/43/EC, 2004/113/EC and 2006/54/EC](#), Human European Consultancy and Ludwig Botzman Institute, EU Publications, 2010, Page 128.



2 INSTITUTIONAL RACISM

2.1 INTERNATIONAL DEFINITIONS

The **European Commission** valuably identifies the issue of ‘**structural racism**’ in the EU Anti-Racism Action Plan 2020-2025 as the underlying problem to be tackled in taking steps to address racism. The European Commission identifies this in institutional terms as: “racist and discriminatory behaviours can be embedded in social, financial and political institutions, impacting on the levers of power and on policy-making”; and in broader structural terms as: “in the way society functions, how power is distributed and how citizens interact with the state and public services”¹. The European Commission usefully emphasises the need to acknowledge structural racism and to address it through proactive policies, and to include an intersectional perspective in this.

In its recent report on issues of systemic racism and the violations of human rights of Africans and people of African descent, by law enforcement agencies, the **UN Office of the High Commissioner for Human Rights** (OHCHR) defined systemic racism as: “the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin”².

The UN OHCHR posed this issue in historical terms, in the report, usefully noting that systemic racism: “persists, in large part, due to misconceptions that the abolition of slavery, the end of the transatlantic trade in enslaved Africans and colonialism, and measures taken by States to date, have removed the racially discriminatory structures built by those practices, and created equal societies”³.

The UN OHCHR also points to the intersectional dimensions of systemic racism in being: “shaped by intersectionality or the combination of several identities, including sex, gender, sexual orientation, gender identity, nationality, migration status, disability, religion, socioeconomic and other status”⁴.

The **United Nations** Committee on Social, Economic and Cultural Rights defined systemic discrimination as the “legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups”. It identifies the need for “public leadership and programmes to raise awareness about systemic discrimination” and the need for

1 Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, [A Union of Equality: EU anti-racism action plan 2020-2025](#), Brussels, 18.9.2020 COM(2020) 565 final, Page 1 and Page 13.

2 [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), Report of the United Nations High Commissioner for Human Rights, 2021, Page 5.

3 Idem, Page 6.

4 Idem, Page 7.

“laws, policies and programmes, including temporary special measures” to tackle such discrimination⁵.

The Intercultural Cities Programme of the *Council of Europe* defined systemic discrimination as occurring “where the procedures, routines and organisational culture of any organisation contribute to unequal outcomes for minority groups compared to the general population”⁶. It suggests that this can be rooted in the way organisations go about their day-to-day business as policymakers, employers, or service providers, and can also feature in automated decision making.

The European Commission against Racism and Intolerance (ECRI) of the *Council of Europe* defines structural discrimination as referring to “rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that, consciously or unconsciously, present obstacles to groups or individuals in accessing the same rights and opportunities as others and that contribute to less favourable outcomes for them than for the majority of the population”⁷.



These definitions developed at European and international levels deploy a range of terms in moving beyond individual acts of racism, in particular structural racism and systemic racism. In moving beyond the individual level of racism, these different concepts all include a particular focus on the institutional level. They go beyond this level with a wider focus on a societal level and a historical level.

It is at the institutional level that equality bodies can be seen to have particular potential to intervene and address the structural and systemic forms of racism. The mandate and competences of equality bodies direct their attention to the institutional level, in particular due to their competences of litigation and support for good practice. As such, this perspective is focused on the particular institutional level of racism and the contribution to be made at this level by equality bodies.

5 UN Committee on Economic, Social, and Cultural Rights, [General Comment No.20](#), Non-discrimination in economic, social, and cultural rights, Identifying and Preventing Systemic Discrimination at the Local Level E/C.12/GC/20, 2009, Page 5 and Page 12.

6 [Identifying and Preventing Systemic Discrimination at the Local Level](#): Policy Brief, Intercultural Cities Programme, Council of Europe, 2020, Page 6.

7 [ECRI General Policy Recommendations No. 2](#): Equality Bodies to Combat Racism and Intolerance at National Level, adopted on 7 December 2017, Page 13.

2.2 FOCUS ON INSTITUTIONAL RACISM

An early and useful formal definition of institutional racism is provided in the MacPherson report into the police investigation of the death of Stephen Lawrence in the UK⁸. Institutional racism is defined as: “the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”

The report goes on to establish that institutional racism: “persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease.”

Institutional racism is racism by tradition and routine rather than by individual intent. It's not immediately visible, being entangled in the manner in which organisations go about their business, in their day-to-day operations, and in their culture and values, which in turn shape their priorities and processes. Institutional racism is a key motor for inequality, a motor that needs to be exposed and dismantled. There is an imperative to replace this motor with organisational cultures and systems capable of achieving full equality in practice on the ground of racial or ethnic origin.

*Institutional racism is defined as:
“the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”*

Institutional racism is hidden and often unacknowledged. It only becomes visible in the outcomes from organisational cultures and systems for racialised people. It is evident in the accumulated and inter-generational disadvantage experienced by these groups. Within such an understanding, the commitment in the European Commission Anti-Racism Action Plan to drive a consistent approach to data collection, in particular data disaggregated by racial or ethnic origin, is crucial in enabling the visibility of institutional racism. A similar concern is evident in the UN OHCHR report, which gives emphasis to “the importance of data to unpack and understand the differentiated dynamics of systemic racism”⁹.

8 [The Stephen Lawrence Inquiry](#), Report of an Inquiry by Sir William MacPherson of Cluny, Cm 4262-I, 1999.

9 Op. Cit. UN OHCHR, 2021, Page 7.

Institutional racism has come to the fore in public debate in its most shocking forms, particularly in the fields of policing and immigration. It is important, in responding to institutional racism to ensure a focus that goes beyond these manifestations to address the full spectrum of fields in which it operates to disadvantage racialised people: across the social, economic, cultural and political fields.



From this perspective, responses to institutional racism need to encompass all of the four interlinked domains of equality:

- resources, where institutional racism impacts negatively on the distribution of employment and income levels, and of social goods such as education, health, and accommodation, generating disadvantage for racialised people.
- representation, where institutional racism impacts negatively on the distribution of power, in terms of who is making the decisions in organisations, who has access to power and influence, and the composition of political leadership, generating an under-representation of racialised people in positions of influence.
- recognition, where institutional racism impacts negatively on the status and standing of some cultures and ethnicities in society and the manner in which the practical implications of culture and the way groups chose to live their lives are taken into account by organisational systems, generating a failure to value and respond to the practical implications of the cultures of racialised people.
- respect, where institutional racism impacts negatively on the relationships of respect, care, and solidarity open to groups in their engagement with society and its institutions, generating experiences of exclusion, stereotyping, discrimination, and harassment of racialised people.

Within such an understanding, the full range of equality body competences can be and need to be deployed for an effective response to institutional racism: research competences need to uncover and analyse the issue; promotion of good practice competences need to support new organisational cultures and systems; the policy advice role needs to encourage policy makers to develop and drive responses to the issue; the communication role needs to make the issue a focus for public and political debate; and litigation competences need to uncover the issue and drive action to address it.



3 POTENTIAL OF EQUALITY BODIES

3.1 STANDARDS

The *European Commission*, in its recommendation on standards for equality bodies, seeks a focus on structural and systemic discrimination as part of the role of equality bodies to provide independent assistance. It recommends that Member States should take into consideration that this role can include:

“granting equality bodies the possibility to engage or assist in litigation, in order to address structural and systematic discrimination in cases selected by the bodies themselves because of their abundance, their seriousness or their need for legal clarification”¹⁰.

Likewise, the European Commission against Racism and Intolerance (ECRI) of the *Council of Europe*, in its standard for equality bodies, identifies that the mandate of equality bodies should include a focus on structural discrimination, and goes further in emphasising that equality bodies should have powers both to conduct inquiries and to bring cases that address both individual and structural discrimination. It notes the particular importance of independence in this regard “where equality bodies address (structural) discrimination emanating from authorities and where they are attributed the function of taking decisions on complaints”. It notes that equality bodies should promote positive action “where deep-rooted, long-lasting structural discrimination needs to be addressed”¹¹.

Equality bodies have taken up this challenge, specifically in relation to institutional racism, and have done so across all of their functional areas of:

- Promotion of equality and prevention of discrimination;
- Support for people exposed to discrimination and litigation on their behalf; and
- Decision-making on complaints of discrimination.

3.2 PROMOTION AND PREVENTION

Within this function equality bodies work to:

- make institutional racism visible and a focus for informed debate and action; and
- promote, inform, and support policies, programmes, and practices to dismantle institutional racism and to address its impact.

In this work, equality bodies deploy competences of undertaking research, promoting good practice, providing policy advice, and communication.

¹⁰ [Commission Recommendation Of 22.6.2018 on standards for equality bodies](#), European Commission, C(2018) 3850 final, Brussels, 2018, Page 6.

¹¹ [ECRI General Policy Recommendations No. 2: Equality Bodies to Combat Racism and Intolerance at National Level](#), adopted on 7 December 2017, Council of Europe, Page 12 and Page 18.

UNDERTAKING RESEARCH

Given the invisibility of institutional racism, apart from the outcomes of disadvantage it generates for racialised people, there is an imperative to generate evidence of its impact and attention to identifying its processes. The research competence of equality bodies is valuable in this regard. **Research serves to uncover and enable a better understanding of institutional racism, generate attention for the issue and its impacts on racialised people, and provide evidence-based insights into its mechanisms within the cultures and systems of organisations.**

PRACTICE OF INTEREST

The Non-Discrimination Ombudsman in Finland published a research report on ‘Racism and discrimination - everyday experiences for People of African descent in Finland’ that identified discrimination at the individual level and the institutional level.¹² Institutional racism was established in a number of fields, in particular education, employment, and security services and law enforcement. Recommendations are made in relation to addressing structures identified as reflecting institutional racism. It is of concern that the online survey conducted for the research generated hostile responses including seeking to skew the results, and those involved in the research, became a target for widespread harassment. The research secured valuable media coverage for the issue of institutional racism. The equality body intends for it to serve as key background context in the development of the national action plan against racism.

PRACTICE OF INTEREST

In Germany, the Federal Anti-Discrimination Agency funded the #Afrozensus, the first comprehensive survey into the lives, perspectives and discrimination experiences of Black, African and Afro-diasporic people in Germany. A community-based effort, the #Afrozensus was carried out by the educational and empowerment initiative Each One Teach One (EOTO) and their partner Citizens For Europe (CFE). The research team surveyed over 6,000 Black, African and Afro-diasporic people living in Germany and led qualitative interviews and focus group discussions with experts in the fields of healthcare and education. To launch the study report, FADA hosted a hybrid online conference in November 2021 that made concrete recommendations on how to effectively combat racist discrimination and empower people of African descent in Germany.

¹² [Report of the Non-Discrimination Ombudsman: Racism and discrimination - everyday experiences for People of African descent in Finland](#), Non-Discrimination Ombudsman, Finland, 2020.

Equality data is of central importance to achieve a visibility for institutional racism in terms of its outcomes for racialised people. Equality data are key to making institutional racism concrete, and to making its lived reality visible. There are significant gaps in this regard, both in relation to the collection of equality data and in relation to its use in policy making and programme development. Equality bodies can play important roles as champions for the effective collection and use of equality data.

PRACTICE OF INTEREST

In Belgium, Unia undertook a project to improve the collection and use of equality data. This was based on the guidelines on equality data published by the European Commission High Level Group on Non-Discrimination, Equality, and Diversity . It involved: mapping equality data sources to get an overview of what is available and what gaps exist; developing an online data hub to make these equality data more accessible to the public and to stakeholders; and analysis of gaps and presentation of recommendations to address these. The project is seen to have created a positive dynamic around the need for equality data. The equality body is seeking a coordinated strategy to progress work on collecting equality data.

PROMOTE, INFORM AND SUPPORT GOOD PRACTICE

The promotion of good equality practice by equality bodies can include guidance and support in relation to equality-focused systems. These can include equality policies; equality training; leadership for equality; equality plans; and systems for engagement with those subject to institutional racism. Such systems serve to combat, dismantle, and replace the systems that drive institutional racism.

PRACTICE OF INTEREST

The Slovak National Human Rights Centre implemented a project to address school segregation of Roma children. This occurs through the use of separate buildings, classes, cloakrooms and canteens alongside disproportionate enrolment of Roma children in special schools, and has provoked an EU infringement procedure against the Slovak Republic. This initiative by the equality body involved strategic cooperation with the State Schools Inspectorate and the Government Plenipotentiary for Roma in order to provide assistance in the preparation of action plans to address this segregation and to ensure a monitoring of these.

13 [Guidelines on Improving the Collection and Use of Equality Data](#), Subgroup on Equality Data, High Level Group on Non-Discrimination, Equality, and Diversity, European Commission, 2018.

Equality bodies can promote specific systems that ensure equality and prevent or eliminate institutional racism within organisations as a part of their guidance and support for good equality practice.

PRACTICE OF INTEREST

The Netherlands Institute for Human Rights developed an Assessment Framework for civil servants responsible for fraud detection, at the request of the Ministry of Interior and anti-fraud office. The Assessment Framework seeks to inform good practice in preventing ethnic profiling in fraud investigation, and ensure awareness on how ethnic profiling can happen by using indirect criteria. This initiative was stimulated by the exposure of such incidents in the provision of Child Benefits, which subsequently became a source of public debate.

Equinet has been focusing on the role of equality bodies in responding to the new challenges to equality and non-discrimination arising from increased digitisation and the use of Artificial Intelligence, which include challenges of new forms of institutional racism. This potential is identified in the use of AI, by: police for profiling and face recognition; public authorities for fraud detection or allocating places in education; and employers in job recruitment processes.



The recommendations made in this work point to new roles for equality bodies, including in:

- launching public inquiries to enable understanding of the ways in which AI is being deployed that potentially impact on equality and non-discrimination;
- undertaking a legal ‘gap analysis’ to understand how AI systems can be regulated to avoid discrimination and support equality; and
- playing a leading role in developing and disseminating ethical principles and strategies to guide the implementation of existing laws to address the new challenges posed by AI¹⁴.

In the EU Anti-Racism Action Plan, the European Commission notes the importance of statutory equality duties in combating institutional racism and encourages Member States to “identify ways to promote duties to integrate equality considerations into the day-to-day work of public authorities”¹⁵. Statutory equality duties, as set out by Equinet, include:

- preventive duties requiring organisations to establish systems and processes to prevent discrimination;
- institutional duties requiring organisations to establish systems and processes to promote equality for employees and service users; and
- mainstreaming duties requiring public authorities to have due regard to the need to promote equality in legislating, budgeting, regulating, and policy making¹⁶.

A systemic response to institutional racism, a systemic problem, starts with a drive to replace those organisational systems and cultures that generate disadvantage for racialised people. Statutory equality duties, specifically institutional and mainstreaming duties, on public bodies and on private bodies, enshrined in equal treatment legislation, hold potential to ensure such a systemic response.

The key steps required under such statutory equality duties underpin a planned and systematic approach to equality, an approach that involves dismantling and replacing any systems corrupted by institutional racism. These steps include mechanisms such as:

- equality impact assessment, undertaken at final draft stage in the preparation of policies, plans, programmes, and strategies in order to review their potential impact on groups including racialised people, and to include any revisions found to be needed to ensure a positive impact on these groups;
- assessment of the equality issues, facing groups experiencing inequality, including racialised people, and taking steps in developing or reviewing plans, programmes,

14 Allen R. QC & Masters D., [Regulating for an Equal AI: A new Role for Equality Bodies: Meeting the new challenges to equality and non-discrimination from increased digitisation and the use of Artificial Intelligence](#), Equinet and AI Law Consultancy Cloisters, 2020, Page 22 and 23.

15 Op. Cit., European Commission, 2020, Page 23.

16 Crowley N., [Making Europe More Equal: A Legal Duty?](#), Equinet, 2016, Page 3.

policies, and strategies to ensure actions and processes adequate and appropriate to address these issues are provided for; and

- analysis of level of achievement of equality by an organisation and preparation of an equality action plan to improve its performance in this regard, and to address any situations of inequality found, including for racialised people.

Equinet research has demonstrated the centrality of equality bodies to the effective implementation of such statutory equality duties¹⁷. Equality bodies can play a range of roles in this regard, to:

- enforce implementation where they have powers to apply or seek sanctions in cases of non-compliance;
- set, promote, and monitor standards for implementing these duties, providing advice, training, mentoring, and guidance for achieving these standards;
- build public and institutional awareness of and commitment to these duties; and
- seek the introduction or further evolution of statutory equality duties, tracking and evaluating their impact once introduced.

PRACTICE OF INTEREST

In Northern Ireland, there is duty on public bodies to have due regard to the need to promote equality of opportunity and to have regard to the desirability of promoting good relations. Public bodies, when a policy is identified as having a major potential impact on equality of opportunity or good relations, should subject this policy to an equality impact assessment. The Equality Commission for Northern Ireland plays a range of roles in enabling an effective implementation of this duty: an enforcement role in approving equality schemes of public bodies setting out how they will implement the duty, and in responding to individual complaints or investigating on its own initiative any failure to implement these schemes; a standard setting role in publishing guidance on implementing the duty; and a monitoring role in keeping the implementation of the duty under review and publishing reports in this regard.

PROVIDE POLICY ADVICE

Equality bodies can seek systemic change from national and local authorities through the provision of policy advice. This advice can seek the introduction of new systems to counter institutional racism, systems that can extend to both the public and private sector. In this work, equality bodies bring forward alternative approaches that both dismantle the space for institutional racism and replace this with space for advancing the achievement of equality.

¹⁷ Ibid, Page 63.

PRACTICE OF INTEREST

The Netherlands Institute for Human Rights published a Vision Statement in 2021, that sets out and explains the issue of institutional racism and identifies the steps Government should take to address it. These steps include: introduction of positive obligations for the state to investigate, detect and remove hidden indirect discrimination; undertaking ongoing preventive research into the disadvantage of groups by institutions; establishment of supervisory mechanisms against discrimination; undertaking sector-specific and organisation-specific research into discriminatory motives, mechanisms, organisational structures and algorithms; and translation of positive obligations on the public sector into obligations for private actors in important institutional domains, such as the housing market, the labor market, education and care.

In the EU Anti-Racism Action Plan the European Commission encourages Member States to adopt national action plans against racism by the end of 2022, on the basis of guidelines developed by the European Commission. The European Commission suggests involving equality bodies in the design, implementation, and evaluation of these national action plans. As part of the framework for delivery, the European Commission further notes the importance of positive action and Member States are encouraged to: “adopt specific measures to avoid, or compensate for, disadvantages linked to discrimination on grounds of racial or ethnic origin”¹⁸.

The preparation and implementation of national action plans against racism, therefore, provide an important opportunity for equality bodies to intervene with policy advice to ensure:

- ambition, with a transformative agenda defined and pursued, that includes positive action, and that is effective in addressing institutional racism and its impacts; and
- implementation, with a tracking of implementation, that establishes the dynamics of implementation and the causal factors in any implementation failure.

PRACTICE OF INTEREST

The Irish Human Rights and Equality Commission made recommendations to the Irish Government in relation to the National Action Plan on Racism in 2021 as it was under preparation. The submission includes: a focus on positive action with recommendations made in relation to areas such as education, employment, accommodation and health; a focus on equality and human rights systems with a concern to ensure implementation of the public sector equality and human rights duty, and the introduction of effective data-based ethnic equality monitoring; and a focus on the challenges of implementing such action plans with a set of recommendations specifically concerned with implementation processes.

Communication

18 Op. Cit., European Commission, 2020, Page 21.

Institutional racism needs to be a focus for public debate to generate public concern for the issue and support for action to be taken on the issue. Equality bodies contribute to this imperative through their communication competence. This can involve naming the issue and pointing to evidence for the issue, promoting the alternatives in terms of organisational cultures and systems geared for equality, and engaging values of social justice, inclusion, participation, dignity, and autonomy to contribute to a wider cultural context that leaves no room for institutional racism.

The communication work of equality bodies to date on this issue has largely been developed around actions taken under other competences, such as the practices of interest set out above, and using the outcomes from these actions to enable their messaging and to spark public debate.

Effective interventions in relation to institutional racism need to be participative in engaging those communities disadvantaged by this issue. This is reflected in the work of equality bodies across these practices of interest set out above, with steps taken to reach out and engage with communities, and participative approaches developed to include their representative organisations.

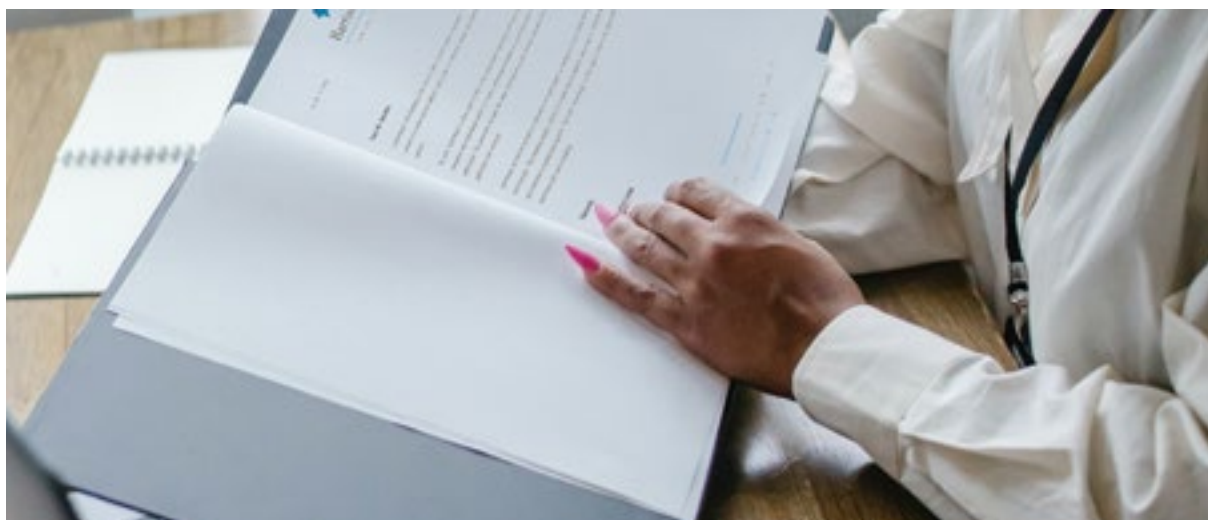


3.3 SUPPORT AND LITIGATION

Within this function equality bodies work to:

- enable those exposed to institutional racism to challenge their experience;
- directly challenge incidents of institutional racism on their own initiative; and
- render the workings of and the impact of institutional racism visible through findings of discrimination;
- build a culture of compliance among policy makers, employers, and service providers that would dismantle institutional racism.

In this work, they deploy competences of providing legal advice and support; providing legal representation; acting as amicus curiae, and own-initiative cases.



Equality bodies can engage in strategic litigation, setting down criteria on which they might prioritise support for or action on a case which include a focus on institutional racism. ECRI in defining strategic litigation emphasises that such strategic litigation should go beyond clarifying and expanding interpretations of equal treatment legislation, and, among other elements, include a priority to “develop case law on structural discrimination”¹⁹.

PRACTICE OF INTEREST

In Belgium, Unia is identified as pursuing strategic litigation on cases that: establish legal precedent; clarify points-of-law; refer to particularly serious facts; are illustrative of a societal debate; relate to a repeated problem; refer to a priority area of Unia strategy; or relate to structural discrimination .

¹⁹ Op. Cit., ECRI, Council of Europe, 2017, Page 21.

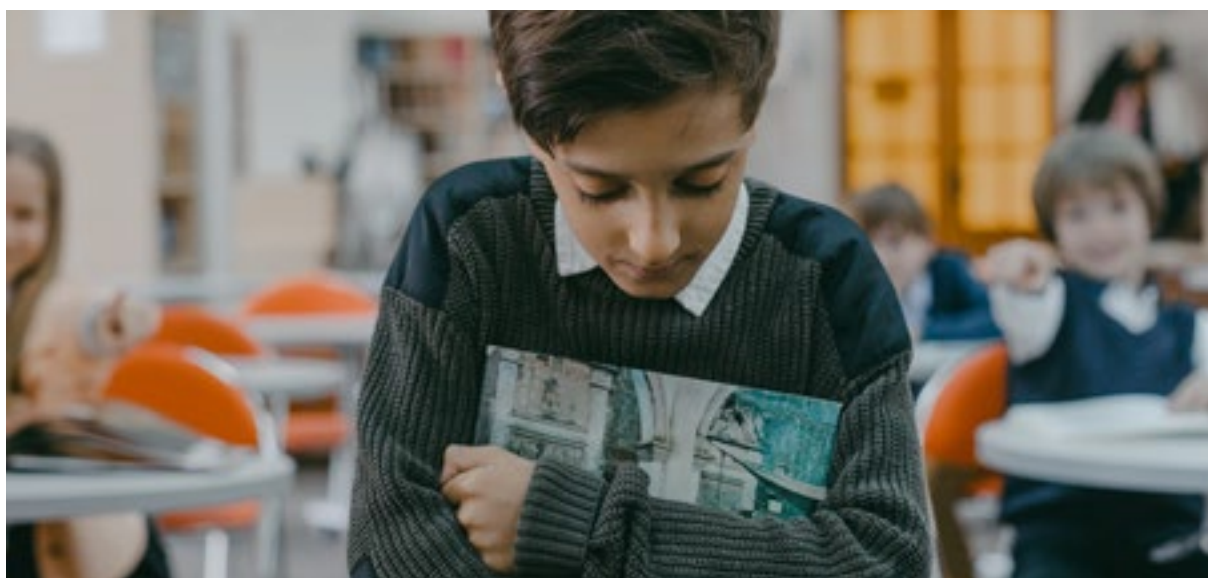
²⁰ Crowley N., Setting and Achieving Standards: Independent assistance competences of the Equality Body, in [European Equality Law Review 2021/1](#), European Network of Legal Experts in Gender Equality and Non-Discrimination, November 2021, Page 6.

Equality bodies, even in the absence of specific provisions in equal treatment legislation in relation to institutional discrimination, can use the provisions of the legislation on direct discrimination and on indirect discrimination, to support, provide representation in, and take cases addressing situations and experiences of institutional racism.

PRACTICE OF INTEREST

In Belgium, Unia provided legal support to a woman who alleged discrimination in seeking employment with the Brussels public transport operator, STIB-MIVB. The woman wears a headscarf and STIB employment regulations do not allow signs of religious, political or philosophical beliefs. The woman first applied for a job with the company in 2015 and again in 2016 and was rejected in both instances. A labour court ruled in 2021 that this was a case of double discrimination, stating that not only is a ban on headscarves disproportionate to the intended purpose (guaranteeing the neutrality of the public transit company), but it also results in gender discrimination. The court found that because Muslim men working for STIB are allowed to grow their beards, Muslim women are at a disadvantage.

The EU Agency for Fundamental Rights found, in 2017, that “only one out of eight respondents (12%) reported or made a complaint about the most recent incident of discrimination based on ethnic or immigrant background”, identifying this as particularly problematic in a context of high levels of discrimination experienced²¹.



Equality bodies can deploy further powers of legal intervention, including own-initiative cases, amicus curiae interventions, and investigation or inquiry in addressing institutional racism. The use of these powers can be important in contexts of high levels of under-reporting of discrimination on the ground of racial or ethnic origin, levels which are even higher when it comes to situations and experiences of institutional racism.

21 [MIDIS II: Second European Union Minorities and Discrimination Survey - Main results](#), European Union Fundamental Rights Agency, 2017, Page 42.

PRACTICE OF INTEREST

The Irish Human Rights and Equality Commission (IHREC) acted as amicus curiae in a 2021 case before the High Court, in which two people seeking asylum had challenged a decision by the Road Safety Authority to refuse them permission to exchange their full drivers licences, issued by their country of origin, for Irish ones. The case was the lead case for a number of similar cases. The RSA claimed that the two applicants were required to produce evidence that they were 'normally resident' in Ireland, that they had not done so and so were not entitled to driver licences. IHREC argued that an inappropriate understanding of normally resident was being applied to the detriment of the asylum seekers, that their 'normal residence' was in fact in Ireland, and that they thus satisfied the residency requirements of the Road Traffic Regulations (Licensing of Drivers) Regulations 2006. The presiding judge found that the applicants were lawfully resident in the State, and therefore eligible for a driving licence.

PRACTICE OF INTEREST

The Defender of Rights in France has been active in litigation concerning ethnic profiling, including amicus curiae interventions. This included providing input as amicus curiae at both the appeals stage and the court of cassation in a case concerning thirteen young French men of north African or sub-Saharan origin who were stopped by the police. The court ultimately held that: non-discrimination law applies to stop and search cases (which had been disputed by the state); and the burden of proof must be shifted to the state once the claimant has established a prima facie case of discrimination.

PRACTICE OF INTEREST

An ex-officio investigation was initiated by the Commissioner of the National Commission for the Promotion of Equality (NCPE) regarding a set of bye-laws, which were being implemented by a number of Local Councils, that were potentially discriminatory on the basis of race and ethnic origin. At the onset of the investigation, the NCPE's Commissioner clarified that its aim was not to target a particular Local Council, but rather to challenge a system which may potentially be allowing such discrimination to occur. The Commissioner noted that loitering for illicit activities was already covered by criminal law and did not necessitate further accentuation. Following a thorough investigation, the Commissioner concluded that SL 363.206 titled Loitering in Marsa and other similar bye-laws targeting loitering had been implemented by the respective Local Council to primarily target foreign nationals, particularly African migrants, in response to complaints by residents of such localities. The Commissioner therefore declared all bye-laws addressing loitering as 'the persistent presence of any person for no apparent reason' to be indirectly discriminatory on the basis of race and ethnic origin. The Commissioner's opinion was sent to the Prime Minister, the Minister for Justice, Culture and Local Government, and the Marsa, Hamrun, Ta' Xbiex, Tal-Pietà and Birkirkara Local Councils.

3.4 DECISION-MAKING

Within this function equality bodies work to:

- render the workings of and the impact of institutional racism visible through findings of discrimination;
- secure action on instances of institutional racism; and
- serve to dissuade those holding responsibility for institutional racism.

In this work, they deploy competences to hear and decide on cases of discrimination; and to make recommendations or make orders or impose sanctions, depending on the powers accorded to them.

PRACTICE OF INTEREST

In Cyprus, the Commissioner for Administration and Human Rights (Ombudsman) investigated and reported on a case deemed to involve ethnic profiling by law enforcement officers in 2017. The case involved on-the-spot verification of a group of individuals who were stopped by the police because the group was non-Cypriot. The Ombudsman recommended that legislation governing the police should include a provision that defined and prohibited police action initiated due to perceived ethnicity or religion; that guidelines regarding such action be issued to all police officers; that a mechanism for recording controls be implemented; that monitoring police action for purposes of gathering statistics, correcting improper action, and imposing sanctions when necessary, be employed; and that training for police officers of all levels include a specific programme on the avoidance of using methods that discriminate on the basis of ethnicity. To-date, the only measure introduced on foot of this has been the provision of training.

In making-decisions, it is important for equality bodies to have the power to impose sanctions, and in particular to impose sanctions that are dissuasive as well as proportionate and appropriate. Further, equality bodies need to be able to make orders that have sufficient scope to be able to address the underlying dynamics of institutional racism within the organisation where a finding of discrimination has been made.



4 ENABLERS, BARRIERS AND CHALLENGES

4.1 ENABLERS

Equality bodies have identified enablers that create space and underpin their ambition and work on institutional racism. These include statutory equality duties, and the trusting relationships needed for effective stakeholder engagement.

Statutory equality duties play an important role in introducing equality focused systems within public sector and private sector organisations that can replace or counter organisational systems that drive institutional racism. Where these duties are well designed, their full and effective implementation has a capacity to advance full equality in practice for racialised people. Equality bodies play key roles in their effective implementation.

However, statutory equality duties are not provided or are inadequately provided for in many jurisdictions. In some jurisdictions the implementation of statutory duties is limited or perfunctory. Further, equality bodies are often not adequately empowered and resourced to monitor and ensure such statutory equality duties are implemented to the requisite standard.

Stakeholder engagement is a key element to inform and to enable an effective equality body response to institutional racism. Civil society organisations, representative of those experiencing institutional racism, have been open and generous in engaging with equality bodies in strengthening their responses to institutional racism.

In some jurisdictions such engagement is hampered for lack of resources or lack of political space within which racialised people can build organisation and leadership for such an effective voice.

Equality bodies have identified enablers that create space and underpin their ambition and work on institutional racism. These include statutory equality duties, and the trusting relationships needed for effective stakeholder engagement.



4.2 BARRIERS

There are barriers identified by equality bodies to their ambition and work in responding effectively to institutional racism. These include lack of recognition for the issue among those holding positions of responsibility, limitations in equal treatment legislation, and the lack of necessary conditions created for equality bodies to be effective.

Institutional racism is not widely understood or recognised or taken seriously as an issue, both generally and among those holding positions of responsibility. There is an institutional defensiveness to any charge of institutional racism, a defensiveness that precludes a constructive response. There is a challenge to make institutional racism visible and understood and to put it on the agenda of policy makers and of those holding positions of responsibility within institutions and organisations.

In a context where institutional racism only becomes visible in the economic, social, political and cultural outcomes for racialised people, efforts to meet this challenge are hampered by the lack of disaggregated data. Efforts can be further hampered in contexts where there is no national action plan against racism or an inadequate plan that fails to recognise and address institutional racism.

There are barriers evident in the equal treatment legislation governing the work of equality bodies. The scope of equal treatment legislation can be limited when it comes to a failure to encompass the functions of public bodies, alongside the services they provide. This is evident where these provisions do not cover the institutions of law enforcement or those responsible for immigration, for example. Provisions in equal treatment legislation in relation to indirect discrimination offer a limited gateway into the issue of institutional racism. However, litigation on indirect discrimination has been limited as it faces a range of barriers including lack of data.

These barriers accompany the more persistent and debilitating barriers for equality bodies in responding to institutional racism, those barriers due to the inadequacy of conditions created for their effective functioning. In particular, most equality bodies face a lack of adequate resources, both human and financial. This is identified by equality bodies as the most serious impediment to work on the issue of institutional racism, and to making their full contribution on this issue.

There are further issues evident in relation to limitations in the powers afforded to equality bodies. Issues of particular importance in this regard when it comes to tackling institutional racism are powers to: take own initiative cases without named victims; request and secure information from the respondent organisation; and impose dissuasive sanctions and make orders for actions adequate to addressing the issue of institutional racism.



4.3 CHALLENGES

There are challenges identified by equality bodies in taking up the issue of institutional racism in a comprehensive manner. These include the hidden and evolving nature of the issue, the intersectional dimensions to the issue, and the complexities of pursuing necessary cultural change.

Institutional racism has taken new and additional forms with the growth of Artificial Intelligence and the digital sphere. There is a challenge for equality bodies to find ways of engaging effectively with this field. More broadly, there is a challenge to pinpoint and uncover where and how institutional racism is happening within organisational systems and cultures; to establish and promote the steps required to prevent institutional racism; and to envision and promote alternative organisational systems and cultures that would be free from institutional racism.

Institutional racism encompasses significant intersectional elements where the ground of race intersects with grounds such as gender, age, sexual orientation, religion, disability, and socio-economic status. There is a challenge to establish the particular experience of intersectional institutional racism and to identify the specific strategies required to combat and replace it, and to redress its impacts. This is further complicated in jurisdictions where the ground of socio-economic status is not covered in equal treatment legislation, and, where the multiple and intersectional discrimination are not specifically prohibited.

Institutional racism is embedded in and sustained by organisational cultures and the wider societal culture. Culture and cultural change, whether at societal or organisational level, are only emerging as a specific focus in the work of equality bodies. There are challenges for equality bodies to effectively intervene at this level both to develop effective strategies and the necessary capacities to do so. Work on values-led strategic communication, advanced by Equinet could assist in meeting this challenge²².

22 Communication Handbook for Equality Bodies, [Framing Equality](#), Equinet and PIRC, 2017.



5 CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

Institutional racism is a level of racism that is interlocked with structural and historical racism. Together they create conditions of inter-generational disadvantage for racialised people and underpin the individual level discrimination they experience. As a driving force for inequality, there is an imperative for equality bodies to afford some priority to making their full contribution to the elimination of institutional racism, and to its replacement by planned and systemic approaches capable of achieving full equality in practice.

Equality bodies have an important contribution to make in meeting this challenge to eliminate and replace institutional racism. This is due to their mandate to promote equality and combat discrimination, and to their competences of litigation, support for complainants of discrimination, research, promotion of good equality practice, provision of policy advice, and communication. This is a contribution that equality bodies are increasingly stepping up to make across their functions of: promotion and prevention; support and litigation; and decision-making.

Equality bodies are enabled in their work on institutional racism, where statutory equality duties apply and with the engagement of representative organisations for racialised people. They face barriers of lack of acknowledgement of the issue from those in positions of responsibility, limitations in equal treatment legislation, and lack of human and financial resources. They are challenged to track and address new forms of institutional racism and to uncover the mechanisms through which it operates, to establish and respond to the intersectional dimensions to the issue, and to develop new responses to the need for cultural change in society and across organisations.

As a driving force for inequality, there is an imperative for equality bodies to afford some priority to making their full contribution to the elimination of institutional racism, and to its replacement by planned and systemic approaches capable of achieving full equality in practice.

5.2 RECOMMENDATIONS

Equality bodies could usefully...

- Strengthen their focus on and deepen their capacity in addressing institutional racism;
- Use their research competences to uncover institutional racism, demonstrate its detrimental effects and advance effective models to address it;
- Use their good practice support competences to define and promote the equality infrastructure required in organisations to ensure there is no place for institutional racism in their culture and systems, and to enable a planned and systematic approach to achieving full equality in practice;
- Open up new approaches and action in relation to institutional racism in the digital sphere and Artificial Intelligence;
- Promote and monitor the effective implementation of statutory equality duties as tools in preventing, detecting and dismantling institutional racism;
- Use their policy advice competence to ensure an effective focus on institutional racism is included in National Action Plans against Racism and acted on;
- Strengthen their capacity for and develop their communication tools in order to more effectively engage with the challenge of achieving cultural change within organisations and across society; and
- Include an explicit focus on institutional racism in their strategic litigation priorities and the criteria set for engaging in such litigation.

National and European level authorities could usefully...

- Strengthen equal treatment legislation:
 - including specific provisions prohibiting institutional racism;
 - ensuring its scope addresses the functions of the public sector;
 - improving provision on indirect discrimination and their implementation; and
 - including provisions to address intersectional and multiple discrimination, and discrimination on the socio-economic status ground;
- Establish good practice models for statutory equality duties, and make provision

requiring such models in the public and private sectors in equal treatment legislation across all jurisdictions, according support and enforcement roles for equality bodies in relation to these functions;

- Include a recognition of institutional racism, and commitments to dismantle institutional racism and to address its impact on racialised people in their National Action Plan Against Racism, and empower equality bodies to inform, monitor, and ensure implementation of such commitments;
- Set and enforce standards for the digital sphere and the use of Artificial Intelligence that encompass ensuring non-discrimination in this field and achieving equality through this field, engaging with equality bodies in developing these standards and empowering them in monitoring and enforcing these standards;
- Protect the democratic space for civil society, and ensure an adequate resourcing and engagement with civil society organisations of racialised people;
- Ensure adequate equality data systems enabling the collection, analysis and use of equality data disaggregated by racial or ethnic origin; and
- Legislate for standards for equality bodies that:
 - enable their role in addressing institutional racism across all their functions;
 - ensure provision of adequate human and financial resources; and
 - underpin the independence required for their effective functioning, in particular in challenging institutional racism.



Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gv.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

KOSOVO*

Ombudsperson Institution
www.oik-rks.org

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

Commission for the Rights of Persons with Disability
www.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

MOLDOVA

Council on Preventing and Eliminating Discrimination and Ensuring Equality
www.egalitate.md

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

Commission for Prevention and Protection against Discrimination
www.kszd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Migration
www.acm.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

Slovak National Centre for Human Rights
www.snsnp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.igualdad.gob.es

SPAIN

Institute of Women
www.inmujer.es

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org

** This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

