

ECRI Conference: Exposing Racism, Intolerance and Inequalities

Session: Tackling Structural Discrimination and Institutional Racism

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1. Opening

Structural discrimination and institutional racism become visible in the unequal outcomes of social, economic, cultural and political disadvantage for Black and minority ethnic people, driving sustained intergenerational inequalities.

These outcomes of disadvantage are evident in:

- situations of inequality in access to key resources such as income, employment, education, accommodation and health;
- experiences of inequality in access to relationships and interactions of care, solidarity and respect with majority populations and with organisations;
- voice with inequality of influence on decision-making, and participation in governance; and
- specific needs, arising from how Black and minority ethnic people chose to live out their culture and identity, that are not addressed nor adapted for.

While change is evident, structural discrimination and institutional racism are not yet widely understood, recognised or taken seriously, often being denied and rendered invisible, and lacking clarity and definition.

2. Elements of structural discrimination and institutional racism:

Structural discrimination and institutional racism encompass three key elements: the historical; the societal; and the institutional.

The historical element involves the unrecognised, untold, and inadequately analysed histories of slavery, colonialism, extraction and exploitation, with their ongoing and current consequences disregarded and unaddressed. It raises our concerns to improve educational curricula to include such histories, and to drive economic policies to redress such injustices.

The societal element focuses involves dominant values, norms and discourse in our societies being characterised by notions of superiority and inferiority, oppressive common-sense notions, and hostility to the detriment of Black and minority ethnic people. It raises our concerns to reshape public and a political discourse based on values of dignity, inclusion and social justice, and to improve litigation on, reporting of and enforcement targeting hate speech and hate crime.

The institutional element involves the organisational policies, procedures and practices that exclude, disadvantage and discriminate against Black and minority ethnic people. It raises our concerns to develop organisational systems that are effective in advancing equality, flexible in responding to cultural diversity, and free from discrimination, and to improve the impact and reach of equality legislation.

These three elements are focused on Black and minority ethnic people, and on those groups at the intersections of the ground of racial or ethnic origin and other grounds such as gender, age, disability, sexual orientation and religion or belief.

2. Responding to structural discrimination and institutional racism:

Planned and systematic responses to structural discrimination and institutional racism are required at national level, encompassing: equality legislation that establishes norms and avenues of redress; equality plans that focus attention and resources on actions to eliminate these issues and to rectify its impact; and policy and legislative processes that leave no room these issues into the future.

Equality legislation needs to be evolved to name and address structural discrimination. Such a normative standard set out in law is needed to effectively respond to structural discrimination and institutional racism.

Provisions made in relation to indirect discrimination have some capacity to address the institutional element of structural discrimination and institutional racism, and have produced some limited caselaw on this issue. However, limited definition, lack of equality data and statistical evidence requirements, and broad interpretation of the objective justification allowed, mean that a critical mass of case law sufficient to sustain a culture of compliance on this issue has not emerged.

Equality planning is increasingly a positive element to national policy making, with structural discrimination and institutional racism emerging as a focus within equality plans. However, an understanding of discrimination as occurring at the individual level predominates in the actions set out, emphasising actions to address individual awareness and individual behaviour; there is little coherence in the understanding of structural discrimination across equality plans; and there are challenges of policy implementation failure in relation to equality plans.

Positive action has a key role to play in responding to and redressing the impact of structural discrimination and institutional racism, and is a valuable focus for these equality plans. However, the range of positive action is often limited to an emphasis on employability and the labour market, and the ambition is often limited to addressing disadvantage rather than achieving full equality in practice.

The focus on intersectionality in these equality plans is underdeveloped, both in the limited manner in which it is understood and it is addressed.

The design of processes for developing policy and legislation at national level is central to eliminating the institutional element of structural discrimination and institutional racism. These processes need to attend to potential impact and need to be directed to the goal of achieving full equality in practice, if they are to counter and remove any tendency to sustain and deepen disadvantage.

Statutory equality duties hold particular potential in driving such change in policy and legislative processes, in particular where they require attention to equality and non-discrimination in decision-making – mainstreaming duties that make use of such as equality impact assessment – and where they drive action on organisational change – institutional duties that make use of such as equality reviews, equality planning and positive action requirements. However, statutory equality duties remain underdeveloped, and their effective implementation remains a challenge.

3. Equality bodies acting on structural discrimination and institutional racism:

An effective response to structural discrimination and institutional racism requires dedicated national-level institutional infrastructure. Governmental institutions are required

that give leadership for and have responsibility for addressing these issues, and that secure coordination across relevant policy fields and engagement with other sectors, in particular civil society.

Equality bodies, as independent statutory bodies also have a key contribution to make in exercising competences of litigation, policy advice, good practice support, research and communication.

In their litigation, equality bodies can take own initiative cases that enable a focus on structural discrimination, and impacted on particular forms of structural discrimination by supporting and taking a critical mass of cases focused on strategic issues. Where equality bodies have powers of inquiry, they can use these to report and make recommendations on structural discrimination.

In their policy advice, equality bodies can put forward arguments and made recommendations for a focus on structural discrimination in equality plans, the introduction of statutory equality duties, and positive action initiatives.

In their good practice support, equality bodies can provide guidance and support for organisations in reviewing their internal policies, procedures and practices for their impact on equality and in planning for change to address the institutional element of structural discrimination and institutional racism.

In their research and survey work, equality bodies can give visibility to structural discrimination in providing an evidence base of unequal outcomes and linking these findings explicitly to, in particular, the institutional element of structural discrimination and institutional racism

In their communication work, equality bodies can open up public discourses that engage values of dignity, inclusion and social justice, seeking to strengthen a culture that leaves no room for hate speech and stereotypes, taking on that societal element to structural discrimination and institutional racism.

Few equality bodies have adequate resources and competences to fully realise this potential. As such, we need to see an effective transposition and implementation of the EU Directives on Standards for Equality Bodies, and implementation of ECRI's General Policy Recommendation No. 2 on Equality Bodies.