PC.SHDM.DEL/4/08/Rev.1
29 May 2008

ENGLISH only

United States Mission to the OSCE

Supplementary Human Dimension Meeting on the Role of National Institutions Against Discrimination in Combating Racism and Xenophobia – Session Three Presentation

As prepared for delivery by Ms. Naomi Earp, Chair of the US Equal Employment Opportunity Commission
May 30, 2008

I. Introduction

Good afternoon! It is a pleasure to participate in this conference and learn about the international approaches to combating racism and xenophobia. Conferences like these demonstrate that despite our differences—in geography, history, and culture, to name a few—we share a common objective: eradicating discrimination and promoting equal opportunity. And it seems clear to me, based on the discussions from earlier today and yesterday, that our similarities outweigh our differences.

I'd like to take the next few minutes to share the American approach to combating racism and other forms of discrimination in the employment context. I look forward to hearing your thoughts and your approaches as well.

II. EEOC overview

I have the privilege of serving as the Chair of the United States Equal Employment Opportunity Commission, or EEOC. EEOC's mandate is to enforce the federal anti-discrimination statutes relating to discrimination in the workplace and to oversee and coordinate all federal equal employment opportunity regulations, practices and policies in the United States.

The federal laws prohibiting employment discrimination are:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;

- the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;

- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;

- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;

- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;

- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination; and

- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits, among other things, employment discrimination against individuals based on genetic information.[1]

EEOC uses a multi-faceted approach to combat racism and other forms of illegal discrimination. The Commission provides national leadership in enforcement and litigation activity: investigating, mediating, conciliating and litigating race and national origin discrimination complaints or charges. The Commission also contributes to the development of laws, policies and regulations related to race and national origin. Finally, the Commission provides outreach, education and technical assistance to employers, employees, stakeholders and the general public. These efforts provide information about employment rights and responsibilities, recent cases and emerging trends.

We have 53 field offices throughout the country. The field office structure enables us to maximize our national impact, focusing on issues of particular importance to local and regional communities while also implementing national programs and initiatives. We also work with 98 state and local Fair Employment Practice Agencies (FEPAs) and 64 Tribal Employment Rights Organizations (TEROs).

III. Race and national origin statistics

Before I provide some details about our enforcement, education, and policy efforts, I'd like to share some statistics. These numbers and trends underscore the importance of eradicating employment discrimination based on race and national origin.

- **Race statistics**

Race remains the most frequently cited basis in discrimination charges, as it has since the Commission's inception.[2] In fiscal year 2007, 37% of charges alleged race discrimination or harassment.[3] Some recent cases litigated by the Commission involve conduct that is blatant and unfortunately all-too familiar: the presence of nooses and use of racial slurs in the workplace.[4]

[1] GINA was signed into law on May 21, 2008, and becomes effective in November 2009.
[2] EEOC, *Charge Statistics, available at* http://www.eeoc.gov/stats/charges.html (last modified Feb. 26, 2008).
[3] *Id.*
[4] *See, e.g.*, Press Release, EEOC, EEOC Obtains $1 Million for Black Man Choked With Hangman's Noose by White Co-Workers (Mar. 21, 2006) (announcing the settlement of a case in which co-workers and managers called a

We have filed several cases on behalf of young workers subjected to egregious racial harassment.[5] EEOC has also litigated cases involving race-based selection processes, in which minority candidates are prevented from applying or are removed from the pool of viable selectees.[6] In some instances, employers appear to purposefully disregard or reject minority applicants based on their race. In other cases, minorities have been denied promotions or certain assignments.[7] The trends in race discrimination resulted in the development of policy guidance and outreach programs, which I will address shortly.

- **National origin statistics**

The number of national origin-related charges has fluctuated over the past 15 fiscal years, increasing to a record high of 9,396 (11.4% of our total charges) in fiscal year 2007.[8] Furthermore, in the wake of the September 11, 2001 attacks, the Commission and state and local FEPAs have observed an increase in charges of religion and/or national origin-based harassment and discrimination made by individuals who are or are perceived to be Muslim, Arab, South

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Black employee a "monkey" and the N-word and choked him with a noose), *available at* http://www.eeoc.gov/press/3-21-06.html (last visited July 24, 2006); Press Release, EEOC, Lithia Car Dealership to Pay $562,500 for Race Bias Against Black Salesman Targeted by Manager (Mar. 16, 2006) (discussing a case in which a manager allegedly informed a Black employee that he would not tolerate "B-P" ("black people") and stated that he'd previously terminated "some of you people"), *available at* http://www.eeoc.gov/press/3-16-06.html (last visited July 24, 2006). The harassment increased after the employee filed an internal complaint. *Id. See also* Press Release, EEOC, Cracker Barrel to Pay $2 Million for Race and Sexual Harassment at Three Illinois Restaurants (Mar. 10, 2006) (describing a case in which Black employees were reportedly referred to as "spear chucking porch monkey," "you people," and "ghetto"; required to wait on Black customers whom White servers refused to assist; and assigned to serve customers in the smoking sections), *available at* http://www.eeoc.gov/press/3-10-06b.html (last visited July 24, 2006); Press Release, EEOC, Consolidated Freightways to Pay $2.75 Million for Racial Harassment of African Americans (Jan. 12, 2005) (resolving a case in which twelve Black dockworkers were subjected to nooses, assault, intimidation, racially offensive graffiti, and property damage), *available at* http://www.eeoc.gov/press/1-12-05.html (last visited July 24, 2006).

[5] In one case, the male supervisor of a 19-year-old Black woman allegedly subjected her and other non-White employees to racial slurs, boasted about his skinhead activities, stated that Whites were the superior race, flashed White power signs, claimed that he had a Confederate flag hanging outside his home, displayed his tattoos (which included a swastika and White Power gang symbols), and announced that he wanted to have a picture of a black lynching victim tattooed to his forehead. The Assistant Manager allegedly said that he was aware of the supervisor's attitude and admitted that he, himself, was racist. The Charging Party was suspended and then terminated shortly after she reiterated her concerns to management. Press Release, EEOC, EEOC and Carl's Jr. Settle Racial Harassment, Retaliation Case (Dec. 14, 2005). In another case, an 18-year-old Black male was repeatedly harassed by his White male supervisor, who directed racial slurs at him, told racially offensive jokes, hid his safety gloves, placed stink bombs under his work station, and told him that vending machines do not take "crack money." The Charging Party stated that he was terminated because of his race. The Commission's investigation revealed a pattern of discrimination and harassment against Black employees at that facility. Press Release, EEOC, EEOC Settles Racial Discrimination Lawsuit Against Thyssenkrupp Elevator (Oct. 28, 2005).

[6] *See, e.g.*, Press Release, EEOC, Georgetowne Place to Pay $650,000 to Settle EEOC Race Discrimination Lawsuit (June 22, 2005) (announcing the settlement of a case in which the hiring manager allegedly directed subordinates to code job applications submitted by minorities and refused to hire minorities for a period of at least nine years), *available at* http://www.eeoc.gov/press/6-22-05.html (last visited July 9, 2006).

[7] Press Release, EEOC, FedEx Freight to Pay $500,000 for Racial Bias (Oct. 24, 2005) (resolving a case in which a trucking company allegedly denied promotions and assignments to qualified Black employees because of their race), *available at* http://www.eeoc.gov/press/10-24-05.html (last visited July 9, 2006).

[8] EEOC, *Charge Statistics, available at* http://www.eeoc.gov/stats/charges.html (last modified Feb. 26, 2008).

Asian, or Sikh.[9] Specifically, between September 11, 2001 and March 11, 2008, the Commission received 1,016 charges alleging post-9/11 backlash employment discrimination.[10] Many of these charges included allegations of harassment or termination.[11] The charges and resulting lawsuits have arisen from a variety of establishments across the nation. EEOC has enhanced its outreach to the Muslim, Arab, South Asian, and Sikh communities and to employers as a result of these charges.

IV. Enforcement and litigation efforts

As the lead federal agency responsible for combating employment discrimination, the EEOC has authority to enforce the law by investigating charges of discrimination, making findings of reasonable cause, engaging in conciliation to resolve violations voluntarily and informally, and initiating enforcement lawsuits in federal court if necessary. EEOC acts not only to obtain specific relief for victims of discrimination, but also to vindicate the public interest in ensuring that workplaces are free of discrimination. The EEOC's litigation program thus seeks to shape the development of clear legal principles in the public interest.

- **Systemic discrimination**

The EEOC's goal is to use our litigation to attain the widest possible impact. We accomplish this by seeking relief that will benefit the harmed parties and prevent the recurrence of discrimination. We also litigate large, complex cases involving systemic discrimination, cases in which the alleged discrimination has a broad impact on an industry, profession, company or geographic area. While these cases are resource-intensive to litigate, they have great potential to pay enormous dividends in the long run. When we secure resolutions that bring about positive changes in the workplace, these changes benefit all employees, not just those receiving direct relief.

A strong litigation program assists us in achieving the early resolution of charges during the administrative enforcement process. Furthermore, publicizing our litigation victories has both educational and deterrent value, enhancing public awareness of EEOC and increasing voluntary compliance with federal employment laws.

- **Mediation**

While we are proud of our litigation program, litigation is a last resort in the EEO process. We encourage employers to work with us to resolve disputes promptly and effectively. Through our

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[9] EEOC, *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs under the Equal Employment Opportunity Laws*, *available at* http://www.eeoc.gov/facts/backlash-employee.html (last modified May 14, 2002).

[10] EEOC Fact Sheet: *Backlash Employment Discrimination Charges Related to the Events of 9/11/2001* (last modified Mar. 11, 2008).

[11] *See* id. (noting that of the 1,012 charges resolved between September 11, 2001 and March 11, 2008, 603 charges allege discharge and 427 charges allege harassment). Four charges remained unresolved as of March 11, 2008. *See also* EEOC, *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs under the Equal Employment Opportunity Laws*, *available at* http://www.eeoc.gov/facts/backlash-employee.html (last modified May 14, 2002).

Universal Agreement to Mediate program, EEOC partners with employers to mediate all eligible charges filed against the employer, prior to an agency investigation or litigation. UAMs may be local, regional or national. Because mediation is voluntary, the employer or the charging party may opt out of mediation on a particular charge even when a UAM has been signed. Employers and charging parties alike have expressed satisfaction with the mediation process: according to one independent study, 96% of employers and 91% of charging parties would use the mediation program again if necessary.[12]

V. Outreach and education programs

We vigorously enforce the law and seek redress for individuals who have been subjected to illegal discrimination. However, we also understand the importance of proactive prevention—preventing discrimination from arising in the first place. To that end, we provide outreach and education to the public, sharing information about the laws, their rights and their responsibilities. We also provide advice and technical assistance to stakeholders, including employers, civil rights organizations, and fellow agencies.

We have implemented several work groups and initiatives to examine specific employment issues and develop potential solutions.

Several initiatives and groups are dedicated to race and national origin issues:

- **E-RACE Initiative**

In February 2007, the Commission launched the E-RACE (Eradicating Racism and Colorism from Employment) Initiative, an outreach, education and enforcement campaign implemented to advance the statutory right to a workplace free of race and color discrimination.[13] Under the E-RACE Initiative, EEOC will identify specific issues, criteria and barriers that contribute to race and color discrimination in the workplace; explore strategies to improve the administrative processing and litigation of race and color discrimination claims; and enhance public awareness of the persistence of race and color discrimination in employment. EEOC will also partner with employee advocates, state and local human rights commissions, human resources professionals, and employer groups to address racial disparities in the workforce and promote meaningful participation by and inclusion of employees of all races.[14]

- **Asian American Pacific Islander Work Group**

The Asian American Pacific Islander Work Group, implemented in October 2007, focuses on problems confronted by Asian Americans in the federal workforce, with a particular emphasis on the employment of Asian Americans in leadership positions, the development of special

[12] http://www.eeoc.gov/mediate/mcd-intro.html.
[13] EEOC, *Meeting of February 28, 2007, to Launch E-RACE Initiative, available at* http://www.eeoc.gov/abouteeoc/meetings/2-28-07/index.html (last modified Apr. 10, 2007). *See also* EEOC, *The E-RACE Initiative, available at* http://www.eeoc.gov/initiatives/e-race/index.html (last modified Jan. 30, 2008).
[14] *See* EEOC, *E-RACE Goals and Objectives, available at* http://www.eeoc.gov/initiatives/e-race/goals.html (last modified Jan. 30, 2008).

emphasis programs related to the Asian American community, and the apparent disparity between the level of perceived discrimination and the number of discrimination complaints filed by Asian Americans.

- **Hispanic Work Groups**

The Hispanic Strategies Group and Hispanic Work Group were developed to address federal sector employment issues confronting the Hispanic community, with a focus on federal sector employment, leadership development, hiring and retention. The Hispanic Strategies Group, implemented in 2005, promotes equal opportunities for Hispanic or Latino employment in the federal workforce by developing relationships with Hispanic/Latino organizations, leaders and employees; providing guidance and training to Hispanic/Latino federal employees on EEO matters; and collaborating with agencies to identify EEO problems and solutions in the areas of participation, advancement, recognition and retention. The group also works to enhance the recruitment of Hispanic/Latino students to the federal government and to establish a network of students and Hispanic/Latino professionals in government by establishing a mentor-mentee program, organizing panel discussions, and providing job search workshops. The Hispanic Work Group was launched last week, and is in the process of developing specific action items.

- **Post 9/11 efforts**

While no specific group has been formed at the EEOC, EEOC has acted in response to the events of September 11, 2001. EEOC and the Department of Justice and Department of Labor issued a "Joint Statement Against Workplace Bias in the Wake of September 11 Attacks."[15] The statement reaffirmed the federal government's commitment to upholding laws, regulations and executive orders mandating workplace nondiscrimination. The statement also noted the government's determination to prevent and redress workplace harassment and discrimination directed at individuals who are, or are perceived to be, Arab, Muslim, Middle Eastern, South Asian or Sikh.

EEOC hosted a Commission meeting on "Employment Discrimination in the Aftermath of September 11." During the meeting, representatives of Arab, Muslim, Sikh, Middle Eastern, and South Asian groups, employers and EEOC Commissioners discussed ways to augment communication and collaboration among the EEOC, businesses, and affected ethnic and religious communities to address backlash issues. In addition, the Commission continued to conduct outreach and education programs regarding religion and national origin-based discrimination for employers and employees, as well as for the Muslim, Arabic, Middle Eastern, South Asian and Sikh communities.

- **Local and regional efforts related to race and national origin**

In addition to national efforts, EEOC field offices throughout the country work with local stakeholders and community members on race and national origin issues of regional importance.

[15] http://www.eeoc.gov/press/11-19-01-js.html.

For example, offices in our Phoenix and San Francisco districts have conducted outreach to the Native American community, and offices in our New York and San Francisco Districts have partnered with the Asian American community, to address relevant employment issues and trends.

Offices in our San Francisco District have partnered with the Southern Poverty Law Center and California Rural Legal Assistance to address issues confronted by migrant farm workers. Offices in our Atlanta District have partnered with local Historically Black Colleges and Universities to conduct training, outreach and educational seminars to provide students with the information and tools needed to compete in the workplace.

Our Las Vegas office has partnered with the local police department to combat illegal trafficking of individuals from Thailand, Mexico and other countries. Our Honolulu office has partnered with the Department of Interior, Department of Labor, and National Labor Relations Board to eradicate sweatshop conditions in the Northern Marianas Islands affecting workers from the Philippines and China.

We also have broad-based programs that include components related to race and national origin issues.

- **Systemic Initiative**

For example, our Systemic Initiative**,** implemented in April 2006, ensures that EEOC has a coordinated, strategic approach to cases involving patterns or practices, policies, or class discrimination which has a broad impact on industries, professions, companies or geographic regions. This fiscal year alone, more than $51 million has been recovered through three litigation settlements, two of which involved race or national origin allegations: *EEOC v. Walgreen Co.* (S.D. Ill.), a lawsuit alleging race discrimination against African Americans in assignment and promotion of retail managers and pharmacists, on behalf of a nationwide class estimated at 10,000 individuals; and *EEOC v. B & H Foto & Electronics, Inc.,* (S.D.N.Y.), a lawsuit alleging national origin discrimination in wages, fringe benefits, and promotion of Hispanic warehouse employees.

- **Youth@Work Initiative**

Our Youth@Work Initiative, launched in September 2004, was implemented to teach teenagers about their workplace rights and responsibilities and help employers create positive work experiences for young adults. While not specifically focused on race and national origin issues, information about these bases is included in outreach presentations. As current participants in and future leaders of American business, government, and society, high school and college students must understand the danger of prejudice and bias—both conscious and implicit—and the importance of tolerance and respect to avoid engaging in unlawful behavior in the workplace.

While the initiative was initially intended to benefit young workers, employers, and educators, we've found that (1) employers have used the Youth@Work website to train their adult workforce; and (2) teens have shared Youth@Work material and information with their parents,

particularly when the parents are recent immigrants or don't speak English as their first language.

- **Freedom to Compete Initiative**

Our Freedom to Compete Initiative, launched in 2002, is an outreach, education and partnership program designed to educate the workforce, deter discrimination and harassment, and promote legal compliance and sound employment practices. The Freedom to Compete award recognizes employer best practices that reflect an abiding commitment to access and inclusion in the workplace. Several winners were recognized for programs that help racial and ethnic minorities compete, advance and succeed in the workplace.

- **Communications strategies**

As discussed earlier, we use a variety of communications strategies to educate employers and employees about the law. We often issue press releases when we file lawsuits, settle cases, issue policy guidance or implement new initiatives. We seek out media opportunities with ethnic, foreign language, and minority news outlets to better reach underserved communities and diverse stakeholder groups. In addition, we have partnered with high-profile athletes and celebrities to publicize the importance of equal employment opportunities. For example, we have developed public service announcements featuring Olympic athletes addressing the importance of equal employment opportunities and renowned musician Wynton Marsalis addressing the value of diversity and the danger of discrimination in the workplace. Because we act in the public interest, it is important to ensure that the public is informed about our enforcement efforts and emerging employment issues and trends.

VI. Policy Development

In addition to enforcement and educational efforts, EEOC contributes to the development and implementation of strategies, policies and plans to combat racism and other forms of illegal discrimination. We identify specific topics that merit additional study or work; work with fellow agencies, external focus groups, and subject matter experts to develop a particular policy or approach; and issue the strategies or policies to the public in a format that is thorough, easy to understand, and consistent with legal and administrative precedent.

- **Race and Color Discrimination Compliance Manual chapter**

In April 2006, the Commission issued a new Compliance Manual section on race and color discrimination.[16] The Race and Color Discrimination Compliance Manual chapter addresses Title VII coverage; evaluation of employment decisions; recruitment, hiring, and promotion; diversity and affirmative action; harassment, bias, and retaliation; and remedies. The Manual

[16] *EEOC Compliance Manual § 15: Race and Color Discrimination, available at* http://www.eeoc.gov/policy/docs/race-color.html (last modified May 1, 2006); EEOC, *Questions and Answers About Race and Color Discrimination in Employment, available at* http://www.eeoc.gov/policy/docs/qanda_race_color.html (last modified May 16, 2006).

also identifies best practices for employers seeking to promote equal employment opportunities and prevent discrimination and harassment based on race and color.

- **National Origin Discrimination Compliance Manual Chapter**

We have also developed a compliance manual section regarding national origin discrimination. The National Origin Discrimination Compliance Manual chapter addresses statutory coverage, assessment of employment decisions; harassment; language issues including accent discrimination and fluency requirements; citizenship-related issues; and retaliation.

- **Post 9/11 fact sheets**

In response to the events of September 11, 2001, we developed fact sheets regarding workplace rights and employer responsibilities concerning the employment of Muslims, Arabs, South Asians and Sikhs.[17] The documents provide information about Title VII coverage, hiring and discharge, harassment, religious accommodation, temporary assignments, background investigations, and additional resources.

VII. Conclusion

According to American civil rights leader Martin Luther King, Jr.: "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."[18]

We live in a global society; advances in technology, communication and business have transformed the world into an interconnected web, an "inescapable network of mutuality, tied in a single garment of destiny." Understanding the problems confronted by other nations and sharing potential solutions and best practices from our own country's experience can only strengthen our institutions and our respective approaches to combating racism and xenophobia and enhance interpersonal and international interactions.

[17] EEOC, *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the Equal Employment Opportunity Laws, available at* http://www.eeoc.gov/facts/backlash-employee.html (last modified May 14, 2002); *Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs, available at* http://www.eeoc.gov/facts/backlash-employer.html (last modified Mar. 21, 2005).

[18] Letter from Birmingham Jail (April 16, 1963).