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United States Mission to the OSCE

Opening Statement at the Supplementary Human Dimension Meeting on the Role of National Institutions Against Discrimination in Combating Racism and Xenophobia

As prepared for delivery by Ms. Naomi Earp, Chair of the US Equal Employment Opportunity Commission
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Mr. Chairman,

On behalf of the United States delegation, I would like to express my thanks to the Organization for Security and Cooperation in Europe for hosting this conference. The eradication of racism and xenophobia is an issue of particular importance to the United States and to the agency I head, the United States Equal Employment Opportunity Commission (hereafter "EEOC" or "the Commission"). It is an honor to participate in this event.

The United States has a rich history of ethnic and cultural diversity. The desire to freely and openly observe diverse religious practices resulted in the establishment of a nation founded on the democratic principles of liberty, justice, and freedom for all. Admittedly, these ideals were not realized at the outset: a slave counted as three-fifths of a white person, women were not given rights equal to those of men, and Native Americans struggled to retain their land and their traditions. Nevertheless, as a nation and as a people, we persevered. To paraphrase American civil rights leader Martin Luther King, Jr., we dreamt of a nation in which our children would be judged not by the color of their skin, but by the content of their character.

The implementation of our democratic ideals—the evolution from who we were as a country to who we hope to become—is a gradual and continuing process that has required political action, legal developments and social transitions. We have learned valuable lessons along the way, including the necessity of reconciling sometimes competing interests: the moral imperative to achieve equality; the shifting legal, political and societal landscape; and the economic realities of success. We have made progress, but much work remains to achieve equality.

The impetus for racial equality under law arose after the Civil War. During the Reconstruction Era, the United States Constitution was amended to abolish slavery; provide for national citizenship, due process and equal protection of the laws; and extend voting rights to all men, regardless of race.[1] In some cases, local communities and state governments enacted laws and

[1] U.S. CONST. amends. XIII-XV. In 1920, a Constitutional amendment extended suffrage to women. U.S. CONST. amend. XIX.

ordinances which preceded federal government efforts; in other cases, state and local bodies opposed national legislation mandating integration and equality.

Today, the country is a potpourri of cultures, beliefs, and traditions.[2] We have established a solid legal framework to protect individuals of all races and ethnicities from harassment and discrimination. The United States Constitution and federal, state and local laws protect individuals from discrimination based on race, skin color, and national origin in virtually all aspects of public life, including education, employment, housing, public accommodations, transportation, voting, and the military. Nevertheless, racism and other forms of invidious discrimination persist.

While acknowledging its imperfections, the American paradigm for protecting individual rights serves as a valuable resource in the global community. Sometimes, nations may wish to follow our model; at other times, the U.S. model may not be consistent with other nations' trends and needs. I look forward to sharing my insights, and to learning more from conference participants about civil rights efforts and equal opportunity practices in their countries.

I. The Civil Rights Act of 1964 and subsequent federal civil rights legislation

The Civil Rights Act of 1964 constitutes one of the seminal pieces of civil rights legislation enacted in the United States. The bill arose as a result of the work of civil rights advocates and civil rights protests staged in Southern cities of the country. In explaining his support of national civil rights legislation, President John F. Kennedy remarked:

> We are confronted primarily with a moral issue. It is as old as the scriptures and it is as clear as the American Constitution. The heart of the question is whether all Americans are afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated . . . . [O]ne hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. . . . And this nation, for all its hopes and all its boasts, will not be fully free until all of its citizens are free. Now the time has come for this nation to fulfill its promise.

On June 19, 1963, President Kennedy sent comprehensive civil rights legislation to Congress. After Kennedy's assassination in November 1963, President Lyndon B. Johnson oversaw the passage of the bill.

The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion and national origin in public education, facilities and accommodations, such as hotels, restaurants, theaters and stadiums. The law also prohibits discrimination in voting and federally funded programs. Title VII of the Civil Rights Act prohibits employment discrimination based on race, color, religion, sex, and national origin. Title VII also prohibits retaliation, or negative treatment,

[2] Out of fifty states, four are majority-minority (Hawaii, New Mexico, California and Texas) and three more states (Maryland, Georgia and Nevada) may soon follow. Furthermore, the District of Columbia and all major U.S. territories (Puerto Rico, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and American Samoa) are majority-minority.

against individuals who file a charge of employment discrimination, participate in an employment discrimination proceeding, or otherwise oppose employment discrimination.

In 1972, Congress provided the Commission with litigation authority to back up its administrative findings and to expand the Commission's jurisdiction. Six years later, in 1978, Congress also granted the EEOC enforcement authority over the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits employment discrimination against workers age 40 and older and the Equal Pay Act, which prohibits wage discrimination between men and women performing substantially equal work.

In 1990, Congress enacted the Americans with Disabilities Act (ADA) to prohibit employment discrimination against individuals with disabilities. The EEOC was given enforcement authority over the employment provisions of the ADA. In 1991, Congress provided that parties to employment discrimination lawsuits had a right to a jury trial. The law also afforded victims of discrimination the right to recover compensatory and punitive damages in lawsuits involving intentional discrimination on the basis of race, color, sex, religion, national origin, and disability.[3] On May 21, 2008, President Bush signed the Genetic Information Nondiscrimination Act (GINA), which prohibits employment and health insurance discrimination against individuals based on genetic information.[4]

II. Federal, state and local civil rights programs and institutions

The United States has numerous federal, state and local departments and agencies which enforce civil rights laws and provide education, training and technical assistance to stakeholders and the public. Federal agencies include the following:

- The Department of Education ensures equal access to education and promotes educational excellence through vigorous enforcement of federal civil rights laws. The Office of Civil Rights prevents, identifies, and remedies discrimination against America's students in admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment.

- The Department of Justice is one of the primary federal agencies responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion and national origin. The Civil Rights Division ensures non-discriminatory access to credit, education, employment, housing, public accommodations, voting and federally funded programs. The Division also enforces national anti-trafficking statutes.

- The Department of Labor includes several offices that handle civil rights issues. The Office of Disability Employment Policy develops and influences disability-related employment policies and practices. The Office of Federal Contract Compliance Programs ensures that employers doing business with the federal government comply

[3] The maximum compensatory and punitive damages available depend on an employer's size. The maximum award was set at $300,000 USD for the largest employers (more than 500 employees).
[4] GINA goes into effect in November 2009.

with nondiscrimination and affirmative action laws and regulations. The Wage and Hour Division enforces the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, and sections of the Immigration and Nationality Act.

- The Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) enforces the laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, and familial status. FHEO also educates lenders, housing providers, developers, architects, home-seekers, landlords and tenants about their legal rights and responsibilities.

- The Equal Employment Opportunity Commission enforces federal equal employment laws that prohibit discrimination based on race, color, religion, national origin, gender, disability and age. EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices and policies.

Most states and many local governments such as counties and cities have state civil rights or human rights commissions or offices that administer and enforce state and local laws prohibiting discrimination in areas such as employment, education, housing, and access to public accommodations. These offices generally accept charges of discrimination, investigate complaints and, where appropriate, hold hearings. They generally also have advisory and educational functions, informing state residents about their rights. Most of these entities have work sharing agreements with federal agencies to ensure that complainants' rights are protected under both state or local and federal law.

Numerous non-governmental organizations and associations promote ethnic and racial tolerance, including the Anti-Defamation League, the American-Arab Anti-Discrimination Committee, the Asian American Legal Defense and Education Fund, the Lawyer's Committee for Civil Rights, the National Association for the Advancement of Colored People, the National Council of La Raza and the Southern Poverty Law Center.

III. Best practices

Over the past few decades, we have learned many valuable lessons about effective, efficient equal opportunity methods.

We have learned to accept piecemeal advancements when comprehensive solutions are not possible. The Civil Rights Act of 1964 was the first comprehensive civil rights law enacted in the United States. The statute prohibits discrimination and harassment based on race, skin color, gender, national origin and religion. Subsequent legislation provides protection from discrimination based on age, disability, and genetic information. Some states or localities provide additional protections beyond the coverage of federal legislation.[5] While one piece of

[5] For example, the District of Columbia prohibits discrimination based on race, color, religion, national origin, sex, age (18 and older), marital status, genetic information, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business of any individual. D.C. CODE ANN. §2-

overarching legislation might have proven more efficient and effective than several separate, less comprehensive bills, the social and political complexities inherent in securing the enactment of national legislation necessitated a more gradual approach in the United States.

We have learned to balance enforcement and litigation efforts with outreach and education. Federal, state and local agencies 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 and fellow agencies.

Along those lines, we also recognize the importance of developing and maintaining strong ties with stakeholders—groups with a vested interest in our work (similar to NGOs in the international context). These groups include community organizations, civil rights organizations, employer associations, and fellow government agencies. These organizations complement our work by conducting outreach and providing material to the public, identifying emerging issues, conducting independent research on relevant topics, litigating cases, and otherwise working with us to promote equal opportunity.

Finally, we recognize that the process of integrating groups into society and achieving equality is a continuously evolving process, and that social, political and other developments require occasional reshaping and refocusing of resources. Accordingly, we support the development of specialized programs and initiatives designed to address existing and emerging issues. For example, my agency, the Equal Employment Opportunity Commission, launched the Eradicating Racism and Colorism from Employment Initiative—the E-RACE Initiative—in February 2007 to increase public awareness of the persistence of race and color discrimination in employment and educate employers and employees about their rights and responsibilities. Among other things, we seek to promote a dialogue among the American workforce about race and color issues and cultural difference, including stereotyping, code words, subconscious bias and racially offensive icons.

And in April 2006, we implemented our Systemic Initiative, which ensures that we have a coordinated, strategic approach to cases in which the alleged discrimination has a broad impact on an industry, profession, company or geographic area. This initiative enables us to leverage our resources to have the widest possible reach; systemic cases can transform entire industries or geographic areas—not just the named defendants. I look forward to discussing these initiatives and other EEOC-related efforts during the conference.

IV. Challenges

In my opinion, based on the American experience, nations confront two primary challenges when seeking to institutionalize equal opportunity principles: politics and funding. In terms of

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1402.11 (2007). Texas prohibits discrimination based on emergency evacuation, situations in which an employee leaves his or her place of employment to participate in a general public evacuation ordered under an emergency evacuation order. TEX. LAB. CODE ANN. §22.002 (1995).

politics, nations must determine how to catalyze the appropriate social and political variables to implement legal changes. They must seek to develop a viable consensus among the necessary parties: government actors, NGOs, civil rights organizations, the corporate community, and representatives of other affected institutions. They must prioritize their goals and formulate an effective strategy for success. Finally, they must be able to appropriately withstand and respond to criticism and resistance from groups or individuals who oppose their efforts.

In terms of funding, nations must understand that institutionalizing equal opportunity, while laudable, has financial consequences. Nations must analytically assess the anticipated scope of legal protections and the costs associated with enforcement and educational efforts when calculating the initial budgetary requirements of institutions against discrimination. To ensure effectiveness and create and maintain credibility within the public sphere, nations must endeavor to accurately estimate the needs of the constituents and the resulting workload of the institution.

V. Conclusion

In the United States, we have experienced substantial legal, social and political changes during the past four decades. In the years before and immediately after the Civil Rights Act of 1964 was passed, discrimination was blatant and pervasive. Education, employment, public accommodations and transportation were segregated by race. Women and minorities confronted restrictions in voting; opening bank accounts and obtaining loans; and owning businesses, homes and land. Mandatory retirement policies routinely forced older workers out of the labor force.

Today, in classrooms across the country, children and teachers from a variety of racial and ethnic backgrounds learn from and interact with each other. The right to vote and access to transportation and public accommodations are no longer restricted or prohibited based on race, gender or ethnicity. Instead of banning older employees from the workforce, companies now actively recruit from and retain this very demographic.[6]

The American workforce has become a rainbow of cultures, beliefs and ethnicities. In a variety of industries and professions, from the athletic court to the judicial court, from the ivory towers of academia to the granite and steel high-rises of corporate America, from Wall Street to Main Street, from local legislatures to the national Cabinet, men and women demonstrate daily that intelligence, determination, leadership and success know no bounds when it comes to race and ethnicity. Clearly, much has been accomplished since the passage of the Civil Rights Act of 1964.

Nevertheless, blatant discrimination such as the presence of nooses and use of racial slurs persists. Discrimination also has become more subtle, and thus more difficult to prove. In some cases, people may not even intend or be aware of their conduct. The concept of "implicit bias" refers to a person's ability to instantaneously, and sometimes subconsciously, process information and arrive at conclusions. In some cases, this process may be completely innocuous.

[6] This phenomenon has even resulted in the development of a nickname—the term "boomeranger" refers to retirees who have reentered the workforce, either out of economic necessity or to cultivate new areas of interest and expertise after the thrill of retirement fades.

However, it can become problematic if a person derives negative associations or stereotypes about specific individuals or groups.

Along with blatant discrimination and subtle discrimination, civil rights leaders also confront the myth of the lack of discrimination. Indeed, despite all evidence to the contrary—discrimination statistics, polls, media stories—academics have identified the concept of "racial exhaustion" or "racial fatigue" to describe the notion, held by some, that racism is a thing of the past, that racial disparities—in education, employment, and other fields—either do not exist in statistically significant amounts or are not due to intentional discrimination. Sadly, racism is alive and well in too many parts of the nation today.

Finally, current demographical changes, including enhanced racial and ethnic diversity, also present new challenges and new opportunities. Studies have demonstrated a correlation between workplace diversity and enhanced productivity; however, increased diversity may also increase the potential for workplace conflict. How could it not, when there are so many different perspectives on various issues? While we may not all agree on everything, we should—we must—learn to communicate with each other and to treat each other with decency and respect.

To effectively address these issues and continue the progress we have made, we must work together, share resources and expertise, and seek assistance when necessary. This conference provides the ideal opportunity to exchange information, share best practices, and learn how fellow countries approach the daunting but necessary task of combating racism and xenophobia. I look forward to sharing the American experience and learning more from my fellow conference participants. Thank you.