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WITHIN THE FRAMEWORK OF THE CONFERENCE “PRINCIPLES ON EQUALITY AND
THE DEVELOPMENT OF LEGAL STANDARDS ON EQUALITY”

ORGANIZED BY THE EQUAL RIGHTS TRUST

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Good afternoon to everyone. Firstly I would like to thank Dimitrina Petrova, Executive Director
to The Equal Rights Trust, for her kind invitation to the National Council for the Prevention of
Discrimination in Mexico allowing us to participate in this international conference.

As representative to the National Council for the Prevention of Discrimination, the public
institution created to combat all kinds of discrimination in Mexico, I feel very honoured to be
considered amongst the 40 specialists in this field, and I hope that the participation of my
organization will contribute with its experience in strengthening the project “Legal Standards on
Discrimination and Equality” as well as other projects in the future.

The topic that I will be addressing during this session relates to the elaboration and execution of
national laws that take into account the right to non discrimination, as well as the work carried out
by specialized bodies that deal with the problem of discrimination and address the issue of equal
rights, opportunities and treatment.

Before addressing this topic, I would like to make a brief introduction to the institution I preside
over. The National Council for the Prevention of Discrimination is the body established by the
Mexican State to articulate and coordinate anti-discriminatory policies in the federal sphere. The
Council was established in April 2004 as a result of the modification made to Article 1 of the
Mexican Constitution in 2001, when the right to non discrimination was included as a
fundamental right, and as a basic principle in the performance of the State and public institutions.

The Council has the faculty to enforce federal law to prevent and eradicate discrimination
referring back to 2003. This legal mandate establishes for the first time in the history of Mexico,
legal mechanisms to prevent and eradicate all kinds of discrimination committed against any
person, either by public servants or individuals and to promote equal opportunities and equal
treatment. Furthermore, it enumerates discriminating grounds such as race and ethnic origin that
remain prohibited and sets up some of the positive and compensatory measures that public
institutions and federal authorities should adopt to encourage equal opportunities within groups
in vulnerable situations.

The Council has devised a national strategy to reduce levels of discrimination within the country
based on the promotion of a non discriminatory culture, devising public policies, achieving legal
harmonization, and carrying out specialized studies on this subject giving specific attention to
discriminatory acts and the creation of institutional networks – national and international – on
human rights.
Not long ago, the existence of discrimination in our country was not recognized. Therefore, we could consider the creation of an anti-discriminatory law and the establishment of a public institution to enforce this law as a major achievement of extreme importance.

On this subject, I would like to point out that due to the structural nature of discrimination, its eradication will require the intervention of the State and a thorough commitment from politicians. Due to its multidimensional character, the combat to this phenomenon is not necessarily uniform. There is consensus within the society to combat discrimination, but the way to do it can differ. Any strategy that is defined could be excluding some categories that exist when combating discrimination.

In this sense, I would like to point out some aspects that are considered fundamental in the creation and execution of the norm that will ensure the right to non-discrimination and their relation to specialized bodies in charge of executing these norms.

**Anti-discriminatory laws:**

**Coercion versus Conviction.**

One of the most controversial aspects when drafting a law is to decide if it should have a coercive character. In this sense, the debate concentrates in defining if these laws should be coercive and punitive or if they should only instigate the conviction and willingness of the people as an incentive to adopt this norm. This definition will determine not only the approach to prevent discrimination, but the way to promote equality and the role played by specialized bodies.

In the case of the anti-discriminatory law in Mexico, the second option reached consensus amongst legislators when discussing it. They believe it would be more convenient to begin with a law that would appeal to the conviction and willingness of the people to respect this norm and to promote equal opportunities and equal treatment. The mechanism that the law provides to rectify discriminatory acts is through conciliation between the parties. After four years of experience enforcing this law, it is apparent that it is necessary to amend it in order to include other corrective measures and rewards that will encourage its compliance.

**Federal character versus local character**

A second aspect regarding the execution of the law relates to the State in which the law is enforced. In this sense, the scope of the law can only be defined in the area covered by federal authorities in order to respect the autonomy of local government. The disadvantage of doing this is that discriminating acts carried out in areas covered by local government would not be subject to the law.

State laws will only deal with discriminating acts at regional level and will not include those committed at federal level.

In the case of Mexico, the option that gathered consensus amongst legislators was the first one, that is to say, the creation of a federal mandate that up to this date, does not include local governments. After four years of experience we have realized that it will be necessary to amend this law in order to include both areas, national and local, in the understanding that normally the execution of federal laws is more advanced than local legislation.
Basic or exhaustive information

A third aspect is whether a basic or an exhaustive catalogue including compensating measures in the law should be established. Some legislators are in favour of the basic catalogue with a view to gradually incorporating other measures; whereas, other legislators prefer the exhaustive catalogue in order to begin with a law that will be as comprehensive as possible.

When considering the anti-discriminatory law of Mexico, we opted for the establishment within the norm of a basic catalogue of measures, but after four years of experience we have come to the conclusion that it will be necessary to increment them.

Legal definition versus academic definition

To initiate a debate about law it is normally necessary to start with some kind of academic, and broad definition on discrimination. This could be as comprehensive as possible. However, in the terms of the law, a shorter definition could also be established. Then, we will be taking the risk that legislators could opt for the shorter definition with regards to the causes that generate discrimination. In some cases the legal definition could exclude certain grounds of discrimination such as: migration, sexual orientation and health condition, as causes for discrimination.

In the case of Mexico, legislators adopted a general academic definition which is written under Article 4 of this legal mandate.

Education

One element that should be included when drafting a law is the inclusion of educational information and widespread awareness of the principles and values that would allow respectful coexistence as means to prevent discrimination and to encourage equal opportunities. Punitive measures could be the first resource to prevent discrimination, but educational programmes, campaigns in the media and public awareness could bring major benefits to society.

In relation to specialized bodies, it has been mentioned that their performance will be linked to the design of the norm. In this sense, there are some controversial aspects to be considered:

Public Sector versus Private Sector

Governments are big originators of discrimination, as well as the private sector and individuals. If we were to pay attention to cases similar to the ones dealt with by the Ombudsman, the bodies in charge of dealing with discrimination would only have to address discriminatory acts carried out by public servants; however, the debate also points out the need to deal with discriminatory acts carried out by businessmen and individuals. For this reason, the public authority against discrimination cannot reduce itself to a figure similar to that of the Ombudsman.

The creation of CONAPRED in Mexico has a hybrid/mixed character, as on the one hand it recognizes discriminatory acts carried out by public servants, as the ones dealt with by the Ombudsman, and on the other hand it also deals with discriminating acts performed by individuals.
Level of autonomy in relation to the Government

When creating an institution to deal with the problem of discrimination, one of the most frequent debates is on the level of autonomy they should have from the government. If it is totally independent, it will only be able to deal with violations to the right to non-discrimination performed by civil servants, but as it is not part of the government, it will not be able to generate public policies. On the other hand, the semi-autonomy of this institution will allow it to deal with cases of discrimination carried out amongst individuals and to generate public policies.

In Mexico legislators decided that the body in charge of dealing with the problem of discrimination should have relative autonomy. In this way, it would be able to deal with cases relating to individuals as well as violations carried out by public servants. At the same time it would also have the capacity to generate public policies relating to discrimination.

Single Discrimination versus Multiple Discrimination

It has been pointed out that a specialized body has greater possibilities of dealing efficiently with problems relating to discrimination than a body created to deal with various types of discrimination. If the tendency is to deal with a single type of discrimination for the sake of achieving greater efficiency, other forms of discrimination that affect society and social cohesion could be left out.

However, the debate contemplates some questions such as, under which circumstances a body that deals with one type of discrimination can be more effective to society in relation to another that covers various types of discrimination? In which way institutions that cover multiple types of discrimination can ensure that the same level of attention is given to all forms of discrimination when dealing with special cases?

In Mexico, CONAPRED, is the institution that promotes the enforcement of the right to non-discrimination in all groups that are susceptible to exclusion, including indigenous groups and those with different sexual orientation. Up to this date, our experience has been a positive one because it promotes equal treatment for the whole population; although, the need to create new administrative areas to deal with multiple cases of discrimination has also been recognized.

A fundamental issue is the establishment of a mechanism to control proper monitoring and proper measurement. Every law and every institution should include mechanisms to measure and monitor actions taken to decrease levels of discrimination.

In Mexico, after four years of experience, and with a law and an institution that prevents discrimination, we have been able to spot some advantages as well as some deficiencies on both. Apart from the need to carry out some adjustments, the most relevant issue is to raise awareness on this topic and most importantly, to raise awareness amongst public servants and society of the consequences of discrimination, as well as the advantages to society when discrimination is prevented.

Thank you very much.