

July 30, 2020

Professor Mary Ann Glendon
Commission on Unalienable Rights
C/O Duncan H. Walker
U.S. Department of State
Washington, D.C. 20520

cc: The Honorable Mike Pompeo, Secretary, U.S. Department of State
Peter Berkowitz, Director of Policy Planning, U.S. Department of State

Dear Chairperson Glendon:

On July 23, 2019, hundreds of human rights, civil liberties, social justice, and faith-based organizations and leaders, including many signatories of this letter, wrote to Secretary of State Pompeo to object to the Commission on Unalienable Rights' ("Commission") mandate, rationale, and composition. Having reviewed the Commission's draft "Report of the Commission on Unalienable Rights" of July 16 ("report") and Secretary Pompeo's speech at its unveiling, we write again to object strenuously to the work product that has emerged from this fundamentally flawed and unnecessary undertaking.

The 111 organizations and 119 individuals listed below submit this letter as a joint, official comment on the draft report. We do so while recognizing that a two-week public comment period is an inadequate timeframe for providing appropriately substantive response to a 60-page document. We furthermore understand that Secretary Pompeo has, as of July 20, instructed all State Department personnel to "read the report thoroughly" as a means to "guide every State Department employee" in the work of carrying out U.S. foreign policy. That the Secretary of State would issue such direction to State Department personnel while you continue to solicit public comment from civil society on a document described as a "draft" epitomizes the bad faith of this enterprise.

We again reiterate the impossibility of separating the Commission's work, which we believe undermines decades of human rights progress, from the political agenda it serves and the historical moment in which it has been written. The report asserts (appropriately, in our view) that the United States should "vigorously champion human rights in its foreign policy," and that "America can only be an effective advocate for human rights abroad if she demonstrates her commitment to those same rights at home." Yet the policies and rhetoric of the Trump administration, and the conclusions of the report itself, undermine these very statements.

From Secretary Pompeo's original call for the Commission to differentiate between "unalienable" and so-called "ad hoc" rights, to his inflammatory speech at the report's launch,

the political agenda underlying the Commission’s work has been transparent and deeply alarming. The Secretary’s willingness to use a speech purportedly about human rights to suggest that a Pulitzer Prize-winning *New York Times* series and largely peaceful protestors demonstrating against racial injustice are part of an ongoing “assault” on America’s rights tradition calls into question the very premise upon which the Commission’s work is based. Secretary Pompeo’s assertion that “foremost among [human] rights are property rights and religious liberty” makes clear his intention to use the report to create a hierarchy of rights—despite your assertions to the contrary—based on his personal political and religious beliefs, as opposed to decades of domestic and international human rights law. And the failure of the Secretary and the Commission to acknowledge the many Trump administration policies that have significantly undermined America’s leadership on human rights undercuts both the Commission’s standing and the report itself.

Beyond these facts, the Commission has never established any compelling argument for why it need exist. The State Department has stonewalled legitimate congressional inquiry concerning its mandate, rationale, and operations; while a number of human rights NGOs have sued the Department over the lawfulness of a body formed to advise Secretary Pompeo on how the United States could abandon its commitment to longstanding interpretations of human rights in favor of a framework grounded in “natural law.” As the plaintiffs of this lawsuit and countless human rights organizations, academics, and advocates have correctly highlighted, the United States is incapable of unilaterally reinterpreting the contours of the human rights framework. The Commission’s work, therefore, amounts to little more than an instance of the “proliferation of nonlegal standards” that the report itself decries—an internal contradiction strongly suggestive of the true purpose of this effort.

For all of these reasons, the Commission’s report will undoubtedly be rejected by the international human rights community. Below, we identify the most concerning aspects of the report itself.

First, we reject the notion—fundamental to the Commission’s mandate—that a proliferation of rights claims has undermined the legitimacy and credibility of the human rights framework. The human rights movement is, indeed, under considerable stress from repressive governments, violent non-state groups, and populist leaders eager to undermine rights-based governance and exacerbate social cleavages for political gain. Yet despite these headwinds, the validity of the human rights project is in no way imperiled by the increasing number of rights claims made by those whose rights have historically been denied them. To the contrary, as we stated in our letter of July 2019, “the story of the international human rights movement is one of the deepened recognition and protective reach of rights based on the painstaking work of social movements, scholars, and diplomats, through international agreements and law.” This growing understanding of rights should be celebrated as an

accomplishment worth protecting—one that fulfills the promise of human rights—not denigrated as a threat.

Second, we reject the idea that there is an untenable uncertainty regarding the meaning and scope of the human rights framework that necessitates sidelining binding treaties.

During his speech, Secretary Pompeo repeatedly stated that the purpose of the Commission is to establish a “framework” for a “proper understanding of unalienable rights,” and made clear his view that these rights come from God. Yet, as many of us have highlighted, the Universal Declaration of Human Rights (“UDHR”) and the nine core human rights treaties negotiated among states, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, codify human rights under widely-recognized rules of international law. These treaties are the product of decades of multilateral negotiations and represent an international consensus regarding the scope of human rights. That they received virtually no mention or analysis in the draft report suggests a fundamentally flawed, and purposefully skewed, approach to the question of what does and does not constitute a human right. That the current administration might not agree with these instruments and their obligations in full or in part does not mean that there is confusion about human rights.

Third, we reject the manner in which the report promotes rights hierarchies through its emphasis on a certain subset of civil and political rights. The report itself acknowledges that human rights are “universal, indivisible and interdependent and interrelated.” Yet it then prioritizes property rights and religious liberty over other civil and political rights, and advocates for the de-prioritization of socioeconomic rights, including by putting increased emphasis on rights interpreted from specific American documents, rather than those guaranteed in international treaties that bind the United States and other governments. Americanization of the human rights framework is both unnecessary and harmful. While we are cognizant that the U.S. government will—like all governments—make foreign policy decisions based on resources and policy priorities, we reject the report’s recommendation that the United States adopt a foreign policy that identifies certain rights as more important than others. This effort to rank rights opens the door to any number of problematic actions by governments that seek to undermine their human rights obligations and violate individual liberties.

Fourth, we strongly reject the Commission’s dismissal of certain rights as “divisive social and political controversies.” The report makes a deeply disturbing distinction between “unalienable rights” and what it describes as the “social and political controversies” of “abortion, affirmative action, [and] same-sex marriage.” To be clear, each of the aforementioned issues relate to human rights guaranteed by international and domestic law, including by the U.S. Supreme Court. To suggest otherwise is to seek to substitute the ideology of the Administration and opinion of 11 individuals for the weight of both domestic and international human rights law

that clearly establishes and recognizes the protection of LGBTQI+ rights and sexual and reproductive rights, including abortion, as human rights imperatives.

Fifth, we reject the report’s focus on so-called new rights and its criteria for recognizing them. According to the report, the legitimacy of the human rights framework is threatened by the recognition of new rights and “novel” applications of existing ones. Such an approach would sideline the post-1948 treaties and processes by which human rights have properly been interpreted to cover marginalized groups and circumstances not explicitly addressed in the treaties in a manner consistent with their principles. The Commission has instead developed its own, restrictive criteria for recognizing “new rights” that will, in practice, circumscribe the ability of all people to claim their full rights. This transparent and unnecessary effort to preclude the extension of universal rights to all people has no place in a document meant to inform the U.S. government.

In sum, we find that the Commission and its report reflect a broader pattern concerning this administration’s retreat from the human rights framework. We believe that the work you have produced will undermine American commitments to human rights and provide cover for those who wish to narrow certain categories of rights protections, resulting in a weakening of the international human rights system and its protections in the process.

Signed,

Non-Governmental Organization (NGO) Signatories

1. Accountability Lab
2. Advocacy for Principled Action in Government
3. The Advocates for Human Rights
4. Advocates for Youth
5. Allard K. Lowenstein International Human Rights Clinic, Yale Law School
6. Ameinu
7. American Atheists
8. American Civil Liberties Union (ACLU)
9. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
10. American Jewish World Service (AJWS)
11. Amnesty International USA
12. Anti-Defamation League (ADL)
13. Art and Resistance Through Education (ARTE)

14. Bayard Rustin Liberation Initiative
15. Better World Campaign
16. Beyond the Bomb
17. Cairo Institute for Human Rights Studies
18. Center for American Progress
19. Center for Disability Rights Inc.
20. Center for Health and Gender Equity (CHANGE)
21. Center for Justice and Accountability
22. Center for Reproductive Rights
23. Central AZ National Lawyers Guild
24. Clearinghouse on Women's Issues
25. Coalition for Ethical Psychology
26. Columbia Law School Human Rights Clinic
27. Columbia Law School Human Rights Institute
28. Columbia Law School Immigrants' Rights Clinic
29. Cornell Gender Justice Clinic
30. Council for Global Equality
31. Crude Accountability
32. DignityUSA
33. Equality California
34. EqualityMaine
35. Equality North Carolina
36. Equity Forward
37. Feminist Majority Foundation
38. The Fenway Institute
39. Foreign Policy for America
40. Freedom From Religion Foundation
41. Global Faith and Justice Project
42. Global Health Justice Partnership of the Yale Law School and Yale School of Public Health (GHJP)
43. Global Justice Center

44. Global Justice Clinic, NYU School of Law
45. Global Women's Institute
46. Happy & Bennett LLC
47. Hawai'i Institute for Human Rights
48. Health GAP
49. Heartland Alliance International
50. Heartland Initiative
51. Human Rights and Gender Justice Clinic, CUNY School of Law
52. Human Rights Campaign
53. Human Rights First
54. Human Rights Funders Network
55. Human Rights Watch
56. Institute on Inequalities in Global Health, University of Southern California
57. International Action Network for Gender Equity & Law (IANGEL)
58. International Center for Advocates Against Discrimination (ICAAD)
59. International Center for Not-for-Profit Law (ICNL)
60. International Center on Religion and Justice
61. International Service for Human Rights (ISHR)
62. International Women's Health Coalition
63. Kent State Truth Tribunal
64. Lambda Legal
65. Latin America Working Group (LAWG)
66. Legal Resources Centre, South Africa
67. MADRE
68. Malcolm X Center for Self Determination
69. Minnesota Peace Project
70. Muslims for Progressive Values
71. NARAL Pro-Choice America
72. National Advocates for Pregnant Women
73. National Council of Jewish Women
74. National Equality Action Team (NEAT)

75. National Lawyers Guild
76. National Network for Immigrant and Refugee Rights
77. Never Again Coalition
78. PAI
79. PFLAG National
80. Pittsburgh Human Rights City Alliance
81. Planned Parenthood Federation of America
82. Population Connection Action Fund
83. Population Institute
84. Presbyterian Church (USA)
85. Program on Human Rights and the Global Economy, Northeastern University School of Law
86. Project Blueprint
87. Radiant International
88. ReThinking Foreign Policy
89. Robert F. Kennedy Human Rights
90. Safeguard Defenders
91. San Jose State University Human Rights Institute
92. Santa Clara Law International Human Rights Clinic
93. Silver State Equality
94. The Solidarity Center
95. Southern Poverty Law Center (SPLC)
96. Synergía - Initiatives for Human Rights
97. T'ruah: The Rabbinic Call for Human Rights
98. The Global Justice Institute
99. The LGBT Bar Association of New York
100. The National Center for Civil and Human Rights
101. Ubuntu Institute for Community Development
102. United Nations Association of the National Capital Area
103. United Nations Association of the USA
104. Universal Access Project, UN Foundation

- 105. Urgent Action Fund for Women's Human Rights
- 106. US Human Rights Network
- 107. Women's Alliance for Theology, Ethics, and Ritual (WATER)
- 108. Women Lead Network
- 109. Woodhull Freedom Foundation
- 110. Work Group Minnesota for Human Rights
- 111. World Without Genocide at Mitchell Hamline School of Law

Individual Signatories

* Note: those listed below have signed in an individual capacity. Affiliations are listed for identification purposes only.

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