



OUTRIGHT
ACTION INTERNATIONAL

April 3, 2020

Commission on Unalienable Rights
US Department of State
Washington, D.C. United States 20520

Dear U.S. State Department Commission on Unalienable Rights,

I write to you as the Executive Director of the non-governmental organization, OutRight Action International, to express our deep concern with the Commission's work to date and the harm that it may cause on the International Human Rights movement, including the internationally recognized Human Rights of LGBTIQ+ individuals.

It is our understanding that the Commission was created with the purpose to differentiate Human Rights and categorize some as "unalienable" and others as "ad hoc".¹ This attempt at differentiating and crafting an impossible hierarchy of rights is of great concern to us and LGBTIQ+ individuals around the world. International Human Rights principles clearly establish that Human Rights are indivisible and universal, and any attempts to create a division between rights generates violations, opening the doors to widespread discrimination and even violence on marginalized communities, including LGBTIQ+ people.²

As such, OutRight joined the hundreds of civil society organizations, human rights scholars, and other concerned citizens who wrote to Secretary of State Michael Pompeo, asking to disband the Commission and continue to center the State Departments work on human rights with the already established State Department Human Rights Bureau.³ In the past several months, comments made by several members of the commission have only reinforced the underlying concerns that led to

¹ See Michael Pompeo, *Unalienable Rights and U.S. Foreign Policy*, Wall Street Journal, (July 7, 2019), <https://www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448>.

² Article 5 of the 1993 Vienna Declaration specifically notes that "[a]ll human rights are universal, indivisible and interdependent and interrelated." UN OHCHR, *Vienna Declaration and Programme of Action* (1993), available at <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>. See also Human Rights Committee, General Comment No. 12: Art. 1 (Right to Self-determination), U.N. Doc. HRI/GEN/1/Rev.6 (March 13, 1984); Committee on Economic, Social and Cultural Rights, General Comment No. 22 (right to sexual and reproductive health (Art. 12)), UN Doc. E/C.12/GC/22 (March 4, 2016).

³ <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>

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this letter. These comments have made it clear that the Commission's purpose is to narrow the scope of U.S. obligations under International Human Rights law and justify a prioritization of some rights, namely the right to freedom of religion, over others.

OutRight, along with LGBTIQ+ human rights defenders around the world, clearly supports the right to freedom of religion. Many LGBTIQ+ individuals have a strong connection to their faith and continue to practice freely and openly. Faith based organizations continue to reinforce that all faiths are inherently inclusive of all people, including LGBTIQ+ communities.⁴ However, the indivisible and universal nature of all Human Rights reinforces the fact that the right to freedom of religion does not overcome the right to be free from discrimination. In his testimony to the Commission, Executive Director of Human Rights Watch Ken Roth clearly articulated that the exercise of some rights, namely freedom of religion, cannot be prioritized over the right to others.⁵

A basic principle of International Human Rights is that all human rights are indivisible and interconnected.⁶ The enjoyment of the right to freedom of religion, right to health, right to freedom of association and any other human right are clearly linked to the right to be free from discrimination as it is impossible to fully enjoy one without the other. In order to ensure that the United States continues to abide by its constitutional obligations regarding International Human Rights Law it is imperative that no rights are prioritized over one another but rather all Human Rights should be supported holistically through the US foreign policy framework.

Privileging specific civil rights reverses the development and trajectory of jurisprudence on human rights law, which exposed how, in protecting individual liberties from state interference, early human rights treaties obscured violence that occurs in traditionally 'private' domains, such as the family or within religious institutions.⁷ It is in the latter areas that women and other vulnerable community members frequently experience human rights violations. Furthermore, certain harmful practices are justified with reference to religious autonomy, which reinforces the danger of a non-integrated approach to human rights. In privileging religious rights over those disproportionately violated by women and sexual minorities, the Commission risks the *de facto* violation of the

⁴ See Global Interfaith LGBTI Network, <http://www.gin-ssogie.org/about-us/our-mission/>

⁵ Ken Roth, *Prepared Testimony to Commission on 'Unalienable' Rights*, Human Rights Watch (Jan. 10, 2020), <https://www.hrw.org/news/2020/01/10/prepared-testimony-commission-unalienable-rights>. See also 2020 Report of the Special Rapporteur on freedom of religion or belief (Freedom of religion or belief and Gender Equality), A/HRC/43/48, available at <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>.

⁶ Article 5 of the 1993 Vienna Declaration specifically notes that “[a]ll human rights are universal, indivisible and interdependent and interrelated.” UN OHCHR, *Vienna Declaration and Programme of Action* (1993), available at <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>. See also Human Rights Committee, General Comment No. 12: Art. 1 (Right to Self-determination), U.N. Doc. HRI/GEN/1/Rev.6 (March 13, 1984); Committee on Economic, Social and Cultural Rights, General Comment No. 22 (right to sexual and reproductive health (Art. 12)), UN Doc. E/C.12/GC/22 (March 4, 2016)

⁷ C Romany ‘Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law’ (1993) 6 *Harvard Human Rights Journal*.

International Covenant on Civil and Political Rights, which mandates the equal protection of the law to all and prohibits sex-based discrimination in this regard.⁸

In light of the Commission's work to date, the make up of the body, and the remarks made by several of its members OutRight once again asks that the Commission cease all activities and that the U.S. State Department abolishes the Commission.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Stern".

Jessica Stern
Executive Director
OutRight Action International

⁸ Article 26 of the 1966 *International Covenant on Civil and Political Rights*, UN General Assembly, United Nations, Treaty Series, vol. 999, p. 171, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.