

CAMPAIGN FOR  
**YOUTH JUSTICE**  
BECAUSE THE CONSEQUENCES AREN'T MINOR

March 30, 2020

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

The Campaign for Youth Justice is an initiative that seeks to safeguard the human rights of children in the United States by reducing their contact with the adult criminal justice system. We write to express our objections to the Commission's work to date, and our deep concern about the potential harm that a final report produced by the Commission may have on human rights, including the rights of children, both internationally and here in the U.S.

As you know, the Commission is an advisory body that was organized and chartered by the Secretary of State under the Federal Advisory Committee Act ("FACA"). As its main objective, the Commission has sought to identify which internationally recognized human rights are "unalienable" and which are "*ad hoc*". The primary purpose of the Commission is thus in direct opposition to U.S. treaty obligations and longstanding foreign policy positions.<sup>1</sup>

From its inception, the Commission's mandate to prioritize some rights – particularly religious freedom – while delegitimizing others has deeply troubled social justice and human rights organizations such as ours, almost 200 of which have asked that the Commission be disbanded.<sup>2</sup> Over the past several months, the work of the Commission has only reinforced our concerns and we renew our call that the Commission be discontinued.

It has become clear to us that the Commission's goal is to produce a report recommending a ranking of rights that prioritizes freedom of religion, while rolling back or eliminating human rights protections for women, LGBTQ persons, and children (including girls and LGBTQ youth). As an organization that seeks to protect the rights and welfare of children, the Campaign for Youth Justice finds this whole approach to be appalling on numerous levels.

### **Prioritizing Rights**

As the Universal Declaration of Human Rights (UDHR) and subsequent human rights treaties make clear, human rights are interdependent, interrelated, and equal in importance.<sup>3</sup> The

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<sup>1</sup> 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>.

<sup>2</sup> <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>

<sup>3</sup> 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).

principle that all rights are equal is a product of the indivisibility of human rights: the denial of one right necessarily impedes the enjoyment of other rights.

Based on comments made by members of the Commission during public hearings, we believe the Commission's final product will seek to discard this fundamental concept in order to establish a false hierarchy of rights. Some members of the Commission and some experts who have testified before it have openly discussed the "prioritization" of some rights over others,<sup>4</sup> mainly focusing on prioritizing freedom of religion over other rights, such as the right to health or the right to be free from discrimination, and arguing that the violation or infringement of "lesser" rights must be tolerated in order to ensure the full protection of religious freedom.<sup>5</sup>

This approach would violate U.S. human rights obligations. As a State party to the International Covenant on Civil and Political Rights (ICCPR) – the core civil and political human rights treaty – the U.S. must respect that religious freedom cannot be used to justify discrimination.<sup>6</sup> The Campaign for Youth Justice is deeply concerned that if discrimination in the name of religion becomes permissible, the rights, safety, and welfare of children (particularly girls and LGBTQ youth) will be irreparably harmed.

### **"Proliferation" of Rights.**

The concept of "unalienable rights" has neither a clear legal nor Constitutional meaning. The use of this term – familiar to Americans because of its use in the Declaration of Independence – appears designed to create a new human rights framework: one in which "unalienable rights" are those that are to be respected, while all other rights are "new" or even "alleged" and can be

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<sup>4</sup> During the Commission's third meeting (held on 12/11/19), Commissioner David Pan responded to remarks by Michael Abramowitz of Freedom House regarding concerns over the Commission's apparent desire to create a "hierarchy of rights," asking Mr. Abramowitz if he would "support that same prioritization that we want to do." The Commission also reproduced a discussion regarding the "prioritization" of rights in the published "minutes" of the third meeting. See <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes-3/>.

<sup>5</sup> Some members of the Commission have expressed this view repeatedly throughout their careers. For a sample of previous statements made by various commissioners, see the following articles: Jayne Huckerby, Sara Knuckey & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, Just Security, (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/>; Masha Gessen, *Mike Pompeo's Faith-Based Attempt to Narrowly Redefine Human Rights*, The New Yorker (July 10, 2019) <https://www.newyorker.com/news/our-columnists/mike-pompeos-faith-based-attempt-to-narrowly-redefine-human-rights>.

<sup>6</sup> 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>. None of the Commissioners suggested that Mr. Roth's position had merit, though it is understood to be an accurate representation of international human rights law by human rights advocates and experts. Complaint, *Robert F. Kennedy Human Rights et al. v. Pompeo*, No. 1:20-cv-02002, ¶¶ 84-85 (S.D.N.Y. filed March 6, 2020) available at <https://democracyforward.org/wp-content/uploads/2020/03/Complaint-As-Filed.pdf>.

disregarded.<sup>7</sup> Secretary Pompeo and several of the commissioners have justified the Commission's work by arguing that a "proliferation" of human rights claims has undermined "fundamental" individual rights, namely freedom of religion and freedom of speech.<sup>8</sup> This argument is unsupported by any evidence. The story of the development of human rights law since 1948 is not the story of a "proliferation of rights", but an extension of widely recognized rights to more people. The "proliferation" that has occurred is that of greater equality for women, children, people with disabilities, LGBTQ individuals, and racial and ethnic minorities, among other populations. It is apparent that the Commission, under the guise of battling against a proliferation of rights, actually seeks to reverse this expansion of equality and withdraw human rights protections for these groups.

### **"Tension" between Rights**

During the Commission's various public meetings, some commissioners have argued that a tension exists between the exercise of religious freedom and the promotion and protection of other rights.<sup>9</sup> Comments and questions from members of the Commission have revealed a belief that this alleged tension should be resolved in favor of the exercise of religious freedom. The necessary consequence of this logic is that discrimination and other human rights abuses would be permissible under international human rights law if based on a supposed claim of religious freedom.

But as Article 18 of the ICCPR, which the U.S. has both signed and ratified, makes clear, freedom of religion can indeed be restricted in order to protect other rights and freedoms<sup>10</sup>:

#### ***Article 18***

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

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<sup>7</sup> During the Commission's second meeting (held 11/1/2019), the Chair of the Commission, Mary Ann Glendon, stated that it was the responsibility of the Commission "to help the U.S. to think more clearly about alleged human rights . . . ."

<sup>8</sup> During the Commission's second meeting (held on 11/1/2019), chairwomen Glendon noted that the Commission was created to address the "proliferation" of rights and stated that "[t]his is one of the reasons to go back to basics, what rights are fundamental, it is right to say that proliferation of rights can lead to a situation where you're either in paralysis or the currency is devalued where truly fundamental rights become meaningless. In his Wall Street Journal op-ed, Secretary Pompeo argued that a "proliferation of rights claims" has "unmoor[ed] us from the principles of liberal democracy." 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>.

<sup>9</sup> During the Commission's fourth meeting (held 1/10/20), Commissioners Peter Berkowitz, Christopher Tellefsen, and Katrina Lantos Swett, each suggested that a "tension" exists between women's reproductive health rights and the free exercise of religion.

<sup>10</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>



The Campaign for Youth Justice finds the Commission’s apparent intention to ignore the plain meaning of this treaty to which the U.S. is a State party, in order to allow violations of the fundamental rights of children and others, to be extremely troubling.

### **Authoritarian Regimes May Be Emboldened by the Commission’s Work**

The Commission’s work is sending a signal to the world that the international human rights framework open to unilateral re-interpretation or can even be dismantled. The Commission’s questioning of the basic foundations of the human rights framework will embolden populist and authoritarian regimes actively promoting revisionist and culturally relativist interpretations of this framework to justify their repressive policies.

For example, during the Commission’s third public meeting, a member of Brazil’s diplomatic delegation applauded the Commission’s efforts to redefine the rights framework, and called on the commissioners to reject “new human rights” that are “anti-human.” More broadly, the Chinese government has long promoted a revisionist and hierarchical approach to human rights in which the right to development and the related right to subsistence are taken as “the primary basic human rights,” trumping all other rights.<sup>11</sup>

The precedent set by the Commission’s work threatens to provide the world’s worst violators with a blueprint for subverting human rights. Though the Campaign for Youth Justice works primarily on behalf of children in the U.S., the profoundly negative impact this development may have on children living under repressive regimes cannot be overstated, and we are, again, deeply troubled that the Commission’s work will actively harm children on a global scale.

### **Procedural Inadequacies (FACA Violations)**

The Commission has also flagrantly ignored the procedural and public disclosure requirements imposed by FACA.

The composition of the Commission violates rules requiring that a federal advisory committee be “fairly balanced in its membership in terms of the points of view represented.”<sup>12</sup> While many members’ expertise lies in religious freedom or public ethics, the Commission contains no experts on women’s rights or children’s rights. There are critics of reproductive rights and LGBTQ rights, but no advocates of such rights. There are no experts on poverty and inequality. Additionally, the body includes no representatives from the State Department’s Bureau of Democracy, Human Rights, and Labor, whose assistant secretary is required by law to lead in advising the Secretary of State on human rights matters.

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<sup>11</sup> See The Beijing Declaration adopted by the First South-South Human Rights Forum, available at <http://www.chinadaily.com.cn/a/201712/08/WS5a2aaa68a310eefe3e99ef85.html>.

<sup>12</sup> See 41 CFR § 102-3.30, “What policies govern the use of advisory committees?,” available at <https://www.law.cornell.edu/cfr/text/41/102-3.30>.

To date, the Commission has failed to disclose publicly the vast majority of documents covered by FACA's disclosure requirements. It has only released inaccurate and partial minutes from the first three meetings. It has failed to release publicly any of the documents that the members of the Commission have relied on in preparation for public meetings, or the external submissions by third parties, including those solicited by the Commission. Based on comments made by various commissioners, it is also clear that the Commission has held several "closed preparatory sessions" and "working group" (subcommittee) meetings that have been closed to the public, in violation of FACA.<sup>13</sup>

Secrecy surrounding the Commission's work is deeply concerning. Its violations of FACA requirements demonstrate a contempt for a law that is intended to ensure government transparency and accountability on behalf of both Congress and the American public.

### **What a review of human rights in US policy should look like**

As has been widely documented by many social justice and human rights organizations, the current administration, like its predecessors, has an extremely poor human rights record. Internationally, it has facilitated widespread war crimes in Yemen and downplayed human rights abuses in countries from North Korea to the Persian Gulf. Domestically, it has denied individuals their legal right to seek asylum, rolled back reproductive health rights at home and abroad, verbally attacked the concept of a free press and individual reporters, and undermined America's independent judiciary. Most concerning for the Campaign for Youth Justice, it has cruelly and maliciously detained migrant children and separated them from their parents.

A good faith review of the role of human rights in U.S. government policy would focus on how the U.S. could both improve its human rights record at home and promote greater protections for *all* human rights abroad. Such a review would first reaffirm the U.S. government's commitment to the current international human rights framework. It would then make clear that human rights are indivisible, interdependent, and enjoyed by all people, regardless of their age, where they come from, what they look like, or who they love. Finally, serious review would recognize that it is in the U.S. government's national interest to make the promotion and protection of human

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<sup>13</sup> Chairwoman Glendon has openly acknowledged the existence of several "working groups," which she has interchangeably referred to as "subcommittees," each of which is comprised of a subset of commissioners and tasked with composing a specific component of the Commission's final written product. According to the published minutes of the first meeting, Chairwoman Glendon publicly announced during the meeting that commissioner Hanson would join the "Terms and Concepts" Working Group, chaired by commissioner Tollefsen. *See* U.S. Dep't of State Commission on Unalienable Rights Minutes (Oct. 23, 2019), <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes/>. The public minutes of the third meeting also include a specific reference to commissioner Carozza's chairmanship of a "working group that will focus on the international human rights principles the U.S. has ascribed since World War II. *See* U.S. Dep't of State Commission on Unalienable Rights Minutes (Dec. 11, 2019), <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes-3/>.

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rights a cornerstone of U.S. foreign and domestic policy, and would recommend appropriate changes to administration policy.

None of the above is the case with the current Commission. The Campaign for Youth Justice urges the Commission to disband, and cease its efforts to establish a false hierarchy of rights that delegitimizes certain rights, including the rights of children.

Sincerely,



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