

April 13, 2020

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

As an NGO dedicated to advancing the human rights of women and girls, I write to express our deep concern with the Commission's work to date, and the potential harm that a final report produced by the Commission, in line with its mandate and the views expressed by several of its members, may have on internationally recognized human rights and U.S. foreign policy.

The purpose of the Commission, according to Secretary of State Mike Pompeo, is to identify which internationally recognized human rights are "unalienable" and which are "ad hoc," in apparent opposition to U.S. treaty and legal obligations and longstanding foreign policy positions.¹ The deeply troubling views expressed by many commissioners support one of our initial concerns; namely, that the Commission's objective is to produce recommendations that would narrow the scope of U.S. obligations under international human rights law and justify a ranking of rights that prioritize some over others. We are particularly concerned that the Commission's work may seek to justify the rolling back of hard-won advances in areas such as the rights of women, girls, and LGBTQ persons.

Though international human rights frameworks do not establish a hierarchy that allows for the exercise of some rights in ways that violate others, some members of the Commission have openly discussed the "prioritization" of some rights over others.² When raised, this discussion has mainly focused on prioritizing freedom of religion over other rights, such as the right to health, which has been a long recognized human right. The right to the highest attainable standard of health, free from violence, coercion or discrimination is a critical component of ensuring that all individuals of all sexual orientations and gender identities are able to exercise their sexual and reproductive rights. This includes having access to the health services, supplies (such as contraception) and information, including comprehensive sexuality education, necessary to fulfill these rights. Furthermore, sexual and reproductive rights encompass the rights of individuals to control and freely make decisions related to their sexuality, reproduction, choice of partner and bodily integrity.

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 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/>.

Some of the commissioners and experts who have testified before the Commission, have argued that freedom of religion sits atop “lesser” or subsidiary rights, and that the violation or infringement of these lesser rights must be tolerated in order to ensure the full protection of religious freedom.³ While no one should face discrimination on the basis of their religion or belief, a prioritization of religion over other rights may have disproportionate impact on women and girls, as well as on sexual and gender minorities. We are concerned that these views regarding prioritization of rights could drown out the testimony of others like Ken Roth, Executive Director of Human Rights Watch, who used his testimony to remind the commission that “...freedom of thought, conscience, and religion does not protect religiously motivated discrimination against women or racial minorities.”⁴

These concerns are further compounded by Secretary of State Pompeo’s argument that the Commission is needed to address a “proliferation” of human rights claims has undermined “fundamental” individual rights, namely freedom of religion and freedom of speech.⁵ What the Secretary of State and others describe as a “proliferation” has largely been an increased recognition over the past several decades, of the rights of women, LGBT individuals and other vulnerable or minority populations. As such, these changes have not undermined international human rights frameworks but has strengthened them, ensuring that they now protect the rights of a greater number of individuals.

For individuals around the world debates about human rights are not theoretical, academic exercises, but matters that impact their daily lives and some cases the difference between life and death. The

³ 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>.

⁴ 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>. Notably, in response, Commissioners Berkowitz, Carozza, Tollefsen, Tse-Chien Pan, and Lantos Swett criticized Roth’s assertion that the rights of women and girls to receive sexual and reproductive healthcare, including access to abortion, should not be absolutely subjugated to the rights of those who would deny such care on the basis of their religious beliefs. In contrast, 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>.

⁵ 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>.

administration has already taken extreme steps to limit access to sexual and reproductive health services and even information both at home and abroad, including defunding UNFPA, reimposing and repeatedly radically expanding the Mexico City Policy (now referred to as “Protecting Life in Global Health Assistance” and purposing massive disproportionate cuts to international family planning and reproductive health programs.⁶ These actions have in effect limited women, girls and others from exercising their sexual and reproductive rights by creating unnecessary and harmful barriers. Furthermore, we have seen this administration seek to narrowly redefine gender as biological sex and strike the term from international negotiated resolutions and agreements.⁷ Even in the State Departments’ annual human rights reports, the Administration has struck reporting on reproductive rights, which included reporting on access to contraception, abortion and maternal mortality among other topics.⁸ We worry that Secretary Pompeo will look to outcome report of this coalition to justify these actions and further limit the rights of and protections for women, girls and LGBT individuals around the world.

From its inception, the Commission’s mandate, the opaque process by which it came into being, the duplicative nature of the body vis-à-vis the State Department’s legally authorized human rights bureau, the publicly-stated views of several of its members, and the lack of diversity of expertise of its membership have deeply troubled hundreds of human rights organizations, including PAI, human rights scholars, and other concerned citizens, who previously asked that the Commission be disbanded.⁹ The work of the Commission has only reinforced these concerns.

Sincerely,



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⁶Trump-Pence Administration’s New Expansive Global Gag Rule Explained: This Time with Pictures, PAI, April 4, 2019 <https://pai.org/newsletters/trump-pence-administrations-new-expansive-global-gag-rule-interpretation-explained-this-time-with-pictures/>

⁷ Diplomatic Doublespeak: U.S. Representatives Seek to Undermine U.N. Sex and Gender Terminology Ahead of Commemorative Day to End Gender-Based Violence. PAI, November 27, 2018 <https://pai.org/newsletters/diplomatic-doublespeak-u-s-representatives-seek-undermine-u-n-sex-gender-terminology-ahead-commemorative-day-end-gender-based-violence/>

⁸ Trump Administration Erases Women in State Department Human Rights Report Once Again. PAI, March 13, 2019, <https://pai.org/press-releases/trump-administration-erases-women-in-state-department-human-rights-report-once-again/>

⁹ <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>