



Department of State Commission on Unalienable Rights
C/O Mr. F. Cartwright Weiland, Office of Policy Planning
Prof. Mary Ann Glendon, Chair
US Department of State
2201 C Street NW
Washington, DC 20520

July 30, 2020

Dear Members of the US State Department Commission on Unalienable Rights,

This past May, the Global Justice Center sent a submission regarding our concerns with respect to the Commission, its work, and the potential harm that a final report produced by the Commission may have on the international human rights framework, specifically as it pertains to the right to abortion.¹

Now, we write to you again as part of the two week public comment period following the release of the Commission's draft report on July 16, 2020. First, we wish to call attention to the fact this is an inadequate length of time for meaningful engagement, both by the public and by the Commission, before finalization of the report. There is little reason to believe that this report is even viewed as a draft version, since the Commission has already completed all of its meetings and there is no mention of "draft" in the text of the draft report itself. Having reviewed the July 16 "Report of the Commission on Unalienable Rights" ("report") and listened to Secretary Pompeo's speech at its unveiling, as well as the following Commission meeting, we write again to express our concerns with the report and any final product that emerges from this Commission. More specifically, we are alarmed by the Commission's flawed representation of the international human rights framework, its legal requirements, and its framing of abortion.

I. Misrepresentation of the International Human Rights Legal Framework

The Commission's report reflects a flawed view of the modern international human rights legal framework,² a system built over the course of over 70 years of dynamic development. Rather than defined by a single group or government, international human rights norms have evolved over this span of time and through a process of consensus-building, negotiation, and global discussion. As we

¹ Global Justice Center, *Submission to the Commission on Unalienable Rights* (May 19, 2020), https://www.globaljusticecenter.net/files/20200519_Final_GJC_Unalienable_Rights_Commission_Submission.pdf.

² It is important to note that the complete lack of citations in the report, as well as information about what the Commission considered and looked to in drawing its conclusions, including legal authorities and submissions that were previously made to the Commission, makes it difficult to understand and analyze what underlies the Commission's conclusions.

highlighted in our last submission to this Commission, the scope of human rights is outlined by a set of nine core human rights treaties, in addition but not limited to, the Universal Declaration of Human Rights (“UDHR”), which codify widely-recognized rules of international law. And yet, this draft report curiously dedicates an entire section to the UDHR while giving little, if any, attention to the other core treaties, including those the United States has ratified and which carry binding legal obligations. A comprehensive analysis of the human rights obligations America has assumed, such as the mandate of this Commission suggests, should necessarily include these treaties, and their binding obligations, in the scope of its review.

The Commission’s report puts forward the notion that “human rights in a nation’s foreign policy often gain more force from the clarity of the nation’s moral purpose and political commitment than from the formality of its legal obligations.”³ In considering human rights in foreign policy, a country’s actions to implement its human rights obligations domestically is a powerful sign. However, if the United States intends to lead by example in ensuring fundamental human rights rather than violating those rights, such leadership is not done merely through platitudes in a report, but rather through meaningful steps, including the domestication of its international human rights obligations.

Additionally, the report advances the harmful, false view that treaty bodies make “extravagant interpretations of the rights in their charters that go far beyond the treaties’ negotiated language.”⁴ The human rights system consists of a number of United Nations (“UN”) and regional human rights bodies, experts, and courts that states, including the United States, have signed up to when they ratify the UN Charter and specific treaties. Treaty bodies in particular are responsible for monitoring the implementation of treaty provisions by states parties and provide authoritative guidance in interpretation and application of human rights provided by treaties. Categorizing these bodies’ interpretations as “extravagant” may be an effort to minimize the United States’ obligations as outlined by these bodies, yet the interpretive authority does not rest with the Commission, but rather with the very bodies designated these responsibilities under the treaties themselves.

The dangerous and incorrect elevation of property and religious liberty rights in the Commission's report illustrates perfectly both the flaws in the Commission’s logic and its misinterpretation of the human rights framework.⁵ The elevation not only creates an impermissible hierarchy of rights, but it also fails to understand that the ability to exercise these rights is interdependent on a score of other rights, including the socio-economic rights the report de-emphasizes.⁶ Furthermore, as the report seeks to elevate these rights over others that they deem “extravagant,”-- rights that protect historically marginalized and persecuted populations and individuals -- it fails to recognize that the rights to property and religious freedom have historically been and continue to be not only denied to

³ US Dep’t of State Commission on Unalienable Rights, *Draft Report of the Commission on Unalienable Rights*, p. 32 (July 16, 2020), <https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf> [hereinafter “Draft Commission Report”].

⁴ Draft Commission Report, p. 48.

⁵ Draft Commission Report, p. 14.

⁶ Draft Commission Report, p. 33-35.

such populations, but they have also been used as tools of oppression against them. In light of these considerations, the elevation of these rights is not only incorrect, but unconscionable.

II. Flawed Framing of the Right to Abortion

We are deeply concerned by the report's framing, or lack thereof, of the right to abortion. Given the background, track record, and writings of the commissioners,⁷ it is not surprising that the Commission has chosen to ignore the development of abortion rights under the international human rights legal framework. The report refers to abortion as a "divisive social and political controvers[y]", grouping abortion with affirmative action and same-sex marriage.⁸ This is a clear indicator that the report is not grounded in the modern human rights framework, and that it also blatantly ignores the framework and its relevance, which we detailed in our previous submission to the Commission. As we noted in that submission, abortion is in fact a firmly entrenched right under a range of human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which the US is party to, as well as the US Constitution, and is not, as the Commission asserts, the subject of "conflicting interpretations of human rights claims."⁹

However, the international human rights legal framework, which incorporates the authoritative guidance of treaty bodies with respect to the right to abortion, is a dynamic, robust system with the potential for very real impact on people's lives. One example from Colombia is emblematic of the influence of international treaties on domestic legislation. In its 2006 decision, the Constitutional Court of Colombia "extended the grounds for legal abortion," being "careful to ensure that it interpreted the Colombian Constitution consistently with the state's human rights treaty obligations, including its ratification of such international treaties as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Civil and Political Rights."¹⁰ This more expansive ruling set an important precedent for the domestic incorporation of international standards on abortion rights in the region, and signifies the importance of this human rights framework not just on paper, but also in lived experiences.

III. Conclusion

We have strong concerns regarding the Commission's report and its potential to undermine US commitments to human rights, fuel skepticism towards the human rights system, narrow certain categories of rights protections, and accelerate rollbacks on human rights. Additionally, the draft report does not appear to take into account or reflect the previous round of written submissions,

⁷ See Equity Forward, *The Majority of the Commission on Unalienable Rights Members Have Egregious Track Records on Reproductive Rights*,

<https://equityfwd.org/research/majority-commission-unalienable-rights-members-have-egregious-track-records-reproductive>; Akila Radhakrishnan & Elena Sarver, *Canary in the Coal Mine: Abortion & the Commission on Unalienable Rights*, 41 Colum. Hum. Rts. L. Rev. HRLR Online (2019), http://hrlr.law.columbia.edu/files/2019/12/Radhakrishnan_Sarver_FINAL.pdf.

⁸ Draft Commission Report, p. 24.

⁹ Draft Commission Report, p. 7.

¹⁰ Rebecca J Cook (2007) Excerpts of the Constitutional Court's Ruling that Liberalized Abortion in Colombia, *Reproductive Health Matters*, 15:29, 160-162, DOI: 10.1016/S0968-8080(07)29294-8.

and there has been no assurances that the final report will be modified to consider the submissions received during the two week public comment period.

Furthermore, the Commission and its report reflect a broader pattern by the Trump administration of a retreat from the international human rights framework, reflected in such examples as the attempts to cut references to sexual and reproductive rights from UN consensus documents. This US practice of exceptionalism - failing to hold ourselves accountable or meaningfully engage with our obligations - has the potential to weaken the international human rights system, its credibility, and its protections. It also has the potential to provide thought leadership and backing for other states to follow the United States' lead and adopt similar dangerous interpretations. Rather, the human rights framework needs support, commitment and cooperation from states, including the United States. In addition, we want to note that the Commission's work, including this report, have been tainted from the start due to the illegality of the Commission's establishment under federal law, and it's continued failure to comply with federal legal requirements, including with regards to its membership balance. As a result, the Commission's report should not be a permissible source of authority for the State Department.

On behalf of the Global Justice Center, I am grateful for the opportunity to provide this written comment to the Commission on Unalienable Rights. I welcome an opportunity to discuss any of the concerns raised in this letter in additional depth.

Sincerely,

A handwritten signature in cursive script that reads "Akila Radhakrishnan".

Akila Radhakrishnan
President
Global Justice Center