

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

April 14, 2020

Dear Members of the U.S. State Department Commission on Unalienable Rights,

I write today on behalf of Human Rights First to express this organization's profound concern with the mandate and work to date of the Commission on Unalienable Rights. Human Rights First urges that you use your final report to Secretary of State Mike Pompeo to recommend that he immediately institute far-reaching changes to a number of Trump administration policies concerning human rights and the rule of law, many of which have been severely damaging to the international human rights movement and U.S. foreign policy interests.

Human Rights First ("HRF") is an independent, nonpartisan 501(c)(3) advocacy and action organization that challenges America to live up to its ideals. Established in 1978, for the past four decades our staff members have worked to ensure that the U.S. government and private companies respect, protect, and promote human rights and the rule of law.

As articulated by Secretary Pompeo, the purpose of the Commission on which you serve is to identify which internationally recognized human rights are "unalienable" and which are "ad hoc."<sup>1</sup> As we and other NGOs have previously made clear, this mandate falls in direct contrast to existing U.S. treaty obligations and longstanding bipartisan foreign policy positions of the U.S. government.<sup>2</sup> From its inception, the Commission's stated objectives, the opaque process through which it was created, the publicly-stated views of several of its members, and the lack of diversity of expertise of its commissioners, have deeply troubled HRF, as well as hundreds of other human rights organizations, human rights scholars, and concerned citizens. Our close observation of the Commission's work over the past several months has only reinforced these concerns.

Human Rights First staff members have attended nearly all of the Commission's public meetings, and have maintained a detailed dialogue with representatives of other human rights NGOs who have attended such meetings. We write today from this perspective.

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<sup>1</sup> 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> July 23, 2019 letter signed by hundreds of human rights NGOs and scholars: <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>.

Questions and comments made by some commissioners during public meetings have reinforced one of our deepest concerns: namely, that the Commission’s final report will present a narrow and inaccurate interpretation of U.S. obligations under international human rights law, and will suggest support for a model of human rights promotion that prioritizes or gives more weight to some rights over others. When raised, the Commission’s discussion of rights prioritization has focused squarely on prioritizing freedom of religion over other internationally recognized rights, such as the right to health or the right to be free from discrimination. Some commissioners, as well as some of the individuals who testified before the Commission, have suggested 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.

Any such prioritization of human rights is incompatible with the human rights framework, and, as members of the Commission are likely aware, would constitute a violation of the United States’ obligations under human rights law. Although the international human rights framework recognizes a distinction between derogable and non-derogable rights—the former being rights that can be suspended in times of national emergency, as is the case today in many countries responding to the novel Coronavirus COVID-19—it does not establish, envision, or condone a hierarchy allowing for the exercise of some rights in ways that violate others. 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 principle that all rights are equal is a product of the undeniable indivisibility of human rights: the denial of one right necessarily impedes the enjoyment of others.

Another concerning narrative that has emerged from the Commission’s public meetings and from Secretary Pompeo’s statements is the idea that a so-called “proliferation” of human rights claims has undermined “fundamental” individual rights, namely freedom of religion and freedom of speech. This argument is deeply misguided, and further supports HRF’s concern that the Commission’s work will be used as justification to support policies that would limit the rights of some marginalized groups, including those of women and/or LGBTQ individuals.

The development of the human rights framework since 1948 reflects a recognition that the rights enshrined in the UDHR extend to all individuals and groups of people throughout the world. The ability of these individuals and groups to access and protect their rights has grown in part through the adoption by governments of nine human rights conventions that address the specific rights challenges faced by women, children, racial and ethnic minorities, persons with disabilities, migrants, and other marginalized groups. The adoption of these treaties, as well as the interpretation of the scope of the rights recognized by them, has not resulted in a “proliferation” of rights claims, as Secretary Pompeo and some commissioners have suggested.

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<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) (recognizing that the rights of the Covenant are “interrelated” as a matter of law); 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).

Instead, the adoption and implementation of these treaties has allowed the human rights framework to protect the rights, including civil and political rights, of more people than ever before.

Our concerns regarding members of the Commission’s apparent interest in limiting the human rights framework also stem from these members’ focus on the “tension” that exists between the exercise of religious freedom and the promotion and protection of other rights.

Comments and questions from various commissioners have demonstrated a belief that this tension should be resolved in favor of the exercise of religious freedom. The necessary consequence of this logic is that discrimination against women, LGBTQ individuals, and other minorities would be permissible under international human rights law if based on a supposed claim of religious freedom. To support this position, members of the Commission have relied on the UDHR’s Article 18 and its definition of religious freedom. Although some consider the UDHR binding as a matter of customary international law, the members of the Commission are well aware that the relevant source of positive law for the right to religious freedom is Article 18 of the ICCPR, which the U.S. has both signed and ratified. Unlike the UDHR, the ICCPR expressly states that the right to religious freedom is not absolute, and may be subject to limitations for the purpose of, among other things, protecting the fundamental rights and freedoms of others. ICCPR Article 18 makes clear that the right to freedom of thought, conscience, and religion cannot be used to excuse religiously- motivated discrimination under international law and cannot justify the denial of reproductive healthcare to women and girls.

Finally, Human Rights First staff are deeply concerned that the Commission’s willingness to treat the human rights framework as malleable and open to unilateral interpretation will— inadvertently, but also unmistakably—embolden authoritarian and populist regimes that actively promote revisionist and culturally-relativist interpretations of human rights in order to justify their repressive policies. As a leading expert on Chinese governance and I wrote in a recent analysis of this issue posted at the online law and security journal *Just Security*, the Chinese government, for example, has long promoted a revisionist and hierarchical approach to the human rights framework, arguing that the right to development and the related right to subsistence are the “primary basic human rights” that should trump all others.<sup>4</sup>

As members of the Commission are likely aware, the Chinese government has relied on this interpretation to justify its suppression of the very civil and political rights that the Commission seeks to champion. Similar rationales have been adopted by repressive governments in Tehran, Riyadh, and Havana, to name but a few. By adopting an “American” approach to the human rights framework, and one that may be viewed as prioritizing religious freedom over other human rights, the Commission risks legitimizing the efforts of governments whose express intent is to reinterpret that very framework. This damaging precedential aspect of the Commission’s

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<sup>4</sup> Rob Berschinski and Andréa Worden, *Pompeo’s Commission on Unalienable Rights Looks to Be a “Win-Win” for China*, *Just Security*, (March 23, 2020), <https://www.justsecurity.org/69323/pompeos-commission-on-unalienable-rights-looks-to-be-a-win-win-for-china/>.

work, even if unintended, will undermine gains that the United States and likeminded governments have fought for on the international stage.

Human Rights First strongly supports an honest evaluation of the role that human rights plays in U.S. foreign policy. As our partner organization Freedom House has painstakingly documented, 2019 marked the 14<sup>th</sup> consecutive year in which global freedom has declined.<sup>5</sup> 2020 looks to continue this negative trend, particularly as dozens of world leaders opportunistically centralize power, pass laws criminalizing free speech, and institute intrusive surveillance programs in the wake of the COVID-19 outbreak.

In the midst of this troubling and destabilizing landscape, the Trump administration remains engaged in an assault on human rights and the rule of law both domestically and internationally that is unprecedented in recent American history. In keeping with our mission, Human Rights First strives for objectivity and fairness when it comes to analyzing this—and every—administration’s human rights record. Where we’ve believed that the administration has adopted beneficial policies—such as with its record of using targeted sanctions to address human rights violations—we have said so. Yet clearly, a broad range of policies and rhetoric adopted by the administration have severely damaged America’s credibility concerning support for human rights and the rule of law. A list of such examples is long, and includes:

- a president who routinely attacks a free press<sup>6</sup> and independent judiciary;<sup>7</sup> warmly embraces dictators from Kim Jong Un to Vladimir Putin to Mohammed bin Salman;<sup>8</sup> and has recently stated that his authority, in violation of the Constitution, is “total;”<sup>9</sup>
- a secretary of state who has repeatedly supported budget requests that would reduce U.S. foreign assistance for democracy and human rights by up to 50%;<sup>10</sup> and recently stood by as the President labeled the diplomatic corps responsible for advancing human rights policies the “deep State Department;”<sup>11</sup> and
- an administration that routinely violates U.S. law and treaty obligations by knowingly sending vulnerable people seeking our asylum protection to be tortured, kidnapped, raped and attacked in Mexico;<sup>12</sup> a policy implemented following widespread revulsion at the

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<sup>5</sup> *Freedom in the World 2020*, Freedom House, <https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy>.

<sup>6</sup> <https://thehill.com/homenews/administration/437610-trump-calls-press-the-enemy-of-the-people>

<sup>7</sup> <https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts>

<sup>8</sup> <https://www.cnn.com/2019/07/02/politics/donald-trump-dictators-kim-jong-un-vladimir-putin/index.html>

<sup>9</sup> <https://www.bloomberg.com/news/articles/2020-04-13/trump-declares-he-has-power-to-open-up-states-not-governors>

<sup>10</sup> <https://www.justsecurity.org/64879/congress-will-ignore-trumps-foreign-affairs-budget-request-others-will-not/>

<sup>11</sup> <https://theweek.com/speedreads/903701/coronavirus-doctor-puts-head-hands-when-trump-mentions-deep-state-department-briefing>

<sup>12</sup> <https://www.humanrightsfirst.org/press-release/human-rights-first-publishes-running-database-attacks-asylum-seekers-under-mpp>

administration’s earlier “zero tolerance” policy, which forced the separation of thousands of asylum-seeking children from their parents.<sup>13</sup>

To the best of Human Rights First’s knowledge, no commissioner has used the platform afforded by the Commission to call into question any of the aforementioned policies in any of the Commission’s public meetings. Commissioners tasked with providing the Secretary of State with “advice and recommendations concerning international human rights matters” have thus far failed to indicate publicly that any of the administration’s policies might harm global human rights protections or U.S. interests, or to provide recommendations for policy modifications.<sup>14</sup>

It would be a grave mistake for the Commission to repeat this omission in its final report and recommendations to Secretary Pompeo. Acknowledging the reality of the context in which the Commission undertook its work, and recommending policy corrections to the administration under which its members voluntarily served, would represent a meaningful contribution to the human rights movement and an act of selfless public service. Neglecting to do so will, regrettably, further undercut the principles that Commission members profess to support.

On behalf of the staff of Human Rights First, I’m grateful for the opportunity to provide this written submission to the Commission on Unalienable Rights. My staff and I would welcome an opportunity to discuss any of the concerns raised in this letter in additional depth.

Sincerely,

//signed//

Rob Berschinski  
Senior Vice President for Policy

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<sup>13</sup> <https://www.humanrightsfirst.org/resource/zero-tolerance-cruelty-separating-families-our-southern-border>

<sup>14</sup> See U.S. Dep’t of State, *Department of State Commission on Unalienable Rights*, 84 Fed. Reg. 25109, 25109 (May 30, 2019), <https://www.federalregister.gov/documents/2019/05/30/2019-11300/department-of-state-commission-on-unalienable-rights>.