

March 19, 2020

To the US State Department Commission on Inalienable Rights,

I am writing to express my deep concern with the decision of the Trump Administration to launch an initiative to re-define human rights' principles for today's world. It instructed Secretary of State Pompeo to establish a Commission on Unalienable Rights to provide "fresh thinking" on a common definition of human rights moving forward. We do not need "fresh thinking." We need reaffirmation of an inclusive understanding of rights for today's interdependent and threatened world.

The step appears on the surface to defend rights but it actually represents a barely veiled effort to curtail what legitimately has been seen to count as human rights over the past half-century. The new proposal enshrines "religious liberty" as the key and central expression of human rights that needs protection. To me, that narrowly restricts the meaning of rights violations and protections. It eliminates in particular very important gender protections that have been advanced internationally and in US courts. To be sure, the Charter of the UN defined four key social variables that at the time (1945) were assumed to constitute human diversity; these needed to be safeguarded to assure human dignity, the ultimate aim of human rights protections. It, thus, explicitly prohibited discrimination on the basis of religion and language—drawing on the older nineteenth century criteria that Great Powers had used to carve peoples into bordered nations; and also race (reflecting the horrors of the immediate Nazi past and rejection of colonial hierarchies) and sex (reflecting the work of the transnational women's movements starting in the middle of the nineteenth century).

More recently, gender has replaced the category of sex in rights protections. Beginning in the 1970s, international activists slowly began to employ a gender lens to assess human rights violations, including those committed in the private sphere, hitherto outside the legitimate purview of international human rights attention. Human rights discourse and action began to erode the (artificial) divisions between public and private life. In this way, the domestic family as well as long-standing cultural traditions and customs previously unexamined and exempted from international scrutiny, were drawn into human rights debates.

This profound conceptual shift had many salutary impacts; it made rape and violence against women in war an international crime (not an outrage against family honor as found in previous formulations of international law); raised urgent questions about *systemic* domestic violence when the state was unable or unwilling to provide protection; drew new attention to customary practices such as genital cutting long a taboo subject in UN circles; promoted women's reproductive rights as a fundamental human right; and defended individual sexual self-determination. Under the slogan "women's rights as human rights" it accommodated difference while remaining true to the original commitment to human equality. For the first time in the human rights era, it drew the family and traditional cultures and customs into the human rights orbit of concern, monitoring, and legal interventions.

To me, it appears that rejection of this new definition is at the center of Trump's restriction of rights principles. But the implications are grave for one of the grave crises still at our borders: efforts by migrants and refugees to obtain asylum in the United States. Not surprisingly, the older US asylum policies had limited such claims to credible fears of *political* persecution but not economic distress or poverty or violence. Thus, for example, this country welcomed Cuban refugees (fleeing the Castro regime in the 1980s) but not those fleeing poverty in, say, Haiti.

But in the last decade or two, a number of landmark legal cases in the United States pushed by migrant women fleeing violence abroad, and aided by local feminist lawyers, began to broaden definitions of the political. In 1996 in *Matter of Kasinga*, the Board of Immigration Appeals provided asylum to Falziya Kassinga (her name was misspelled in the court case) who fled Togo to escape female genital mutilation and sought asylum in the United States. Her lawyers successfully argued that she met the existing criteria for asylum as a member of a "particular social group" (a gender) in danger of persecution and could not be returned to her country. "It was the first time a US court ruled that a woman who faced fundamental violation of her bodily integrity could be recognized as a refugee." A similar decision was reached in the case of Rodi Alvarado, a Guatemalan woman who fled domestic abuse by her husband, when the police dropped the case claiming it was merely a "domestic matter." And there have been other similar legal victories. Each case, however, was decided separately so the US courts did not establish a wider claim. The newly proposed redefinition of rights will stifle even these modest gains.

I strongly urge you to reject the Administration's plan and affirm the original, broad understanding of the interconnection of rights proclaimed in the Universal Declaration of Human Rights as they have been implemented over recent decades.

Thank you for your consideration.

Jean H. Quataert