

April 3, 2020

U.S. State Department Commission on Unalienable Rights
commisson@state.gov

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

As health care providers, health educators, and health researchers working with sexual and gender minority (SGM) populations, we write to express our concern with your Commission's work over the past year, and the potential harm that your final report could cause to already vulnerable and oppressed SGM populations around the world, ironically undermining basic human rights.

We write on behalf of the Fenway Institute at Fenway Health, a federally qualified health center in Boston, Massachusetts that serves 32,000 patients each year. The Fenway Institute works to make life healthier for those who are LGBTQIA+, people living with HIV, and the larger community. We do this through research and evaluation, education and training, and policy analysis.

The stated 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."¹ Your claim that equal rights for women, girls, and lesbian, gay, bisexual and transgender (LGBT) people are "ad hoc" is incredibly offensive to the memory of those who have advocated for equal rights and an end to cultural and state-sponsored oppression for more than a century, such as Elizabeth Cady Stanton, Susan B. Anthony, Magnus Hirschfeld, and Bayard Rustin. This position is also in stark opposition to U.S. treaty and legal obligations and longstanding foreign policy positions, including President Trump's own stated support for other countries' repealing national laws criminalizing same-sex behavior.

Comments made by Commissioners during public hearings lead us to believe that the Commission's final report will establish a hierarchy of rights, with the rights of religious conservatives on the top and those of women, girls, and SGM people at the bottom. Several commissioners have stated during public meetings that a tension exists between religious freedom and the promotion and protection of other rights.²

The religious right in the U.S. has long framed women's rights, children's rights, and equal rights for LGBT people as a threat to the rights of religious conservatives. This is a false claim. Equal rights are not a limited pie, and equal rights are not a zero sum game. Legal equality for women and girls, or for LGBT people, does not take away rights from religious conservatives. But this false claim has served as the basis of campaigns to prohibit sexual orientation nondiscrimination laws dating back to Miami in 1977, as well as to campaigns to prohibit

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 For example, during the Commission's January 10, 2020 meeting, 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.

marriage equality starting in the early 1990s, and campaigns to restrict the rights of transgender people today.

Religious refusal laws and policies at the state and federal level in the U.S., championed by religious right groups like the Family Research Council and the Alliance Defending Freedom, allow health care and social service providers to deny care to people based on religious or moral belief. These policies are based on a fundamental misunderstanding of what free exercise of religion is and what it means. They threaten the ability of LGBT people to access health care. They violate the most basic Christian teaching: “Do unto others as you would have them do unto you” (Matthew 7:12, Luke 6:31).

As public health professionals, we know that anti-LGBT discrimination and stigma negatively affect the health and well-being of LGBT people. Anti-LGBT discrimination in health care causes LGBT people to not seek health care, both routine, preventive care and emergency care. In this moment of historical global pandemic, no one should experience discrimination in health care.

Gender-based violence and structural inequality, such as child marriage and girls’ dropping out of school when they reach puberty, cause women and girls to be impoverished and dependent on men in ways that are unhealthy. This is a major factor in the higher rates of HIV infection that we see among young women in southern Africa compared to young men in the same age cohort.

Secretary Pompeo and several Commissioners have argued that a “proliferation” of human rights claims has undermined “fundamental” individual rights, namely freedom of religion and freedom of speech. During the Commission’s November 1, 2019 meeting, Chairwoman Glendon stated 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.” Secretary Pompeo argued in an op-ed in the *Wall Street Journal* that a “proliferation of rights claims” has “unmoor[ed] us from the principles of liberal democracy.”³

We do not believe that applying equal protection of law to women, members of racial and ethnic minority groups, LGBT people, or people with disabilities renders the notion of rights “paralyzed,” “devalued,” or “meaningless.” Nor do we believe that this threatens liberal democracy. Instead, we believe that it an essential manifestation of our nation’s quest “to form a more perfect Union.”

We are deeply concerned that the Commission’s work will undermine efforts to protect vulnerable LGBT populations around the world, and especially in the former Soviet bloc, sub-Saharan Africa, and in the majority Muslim and/or Arab countries. According to the United Nations:

³ 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>.

In at least 76 countries, discriminatory laws criminalize private, consensual same-sex relationships, exposing millions of individuals to the risk of arrest, prosecution and imprisonment – and even, in at least five countries, the death penalty.⁴

The Commission’s work sends a signal to the international community that the U.S. government views the international human rights framework—developed in the wake of the horrors of the Holocaust and World War II as part of an international consensus—as malleable and open to unilateral re-interpretation. The Commission’s questioning of the basic foundations of the global human rights framework could inadvertently embolden authoritarian and populist leaders who are systematically violating basic human rights, including the right to freedom of speech, freedom of religion, and freedom of assembly.

Finally, it is sad that this Commission is not addressing the very real violations of human rights occurring around the world. Human rights are being violently abused in Russia, Syria, Turkey, Yemen, Saudi Arabia, India, China, and Myanmar, just to name a few countries. These violations include suppression of religious freedom and violence against religious minority groups. Human rights are being abused in the United States along our southern border, and against refugees fleeing hellish war and oppression who are now stuck in Greece and Turkey. There is much work to be done to elevate human rights concerns. Sadly, your Commission’s work is not focusing on real need, but on a fundamental misunderstanding of what equal rights for women, girls, and SGM people means. Please reconsider your work and the content of your final report.

Sincerely,

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⁴ United Nations. Fact Sheet. *Criminalization*. [https://www.unfe.org/system/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_\(1\).pdf](https://www.unfe.org/system/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_(1).pdf)