

May 1, 2020

Commission on Unalienable Rights
United States Department of State
2201 C Street NW Washington, DC 20520

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

As human rights organizations, scholars, defenders and activists, we the 167 undersigned, write to express our grave concern about the work of the U.S. State Department's Commission on Unalienable Rights and any potential report or output that undermines the international human rights system and purports to reinterpret its respective treaties and monitoring bodies. In particular, we urge the Commission to reject the prioritization of freedom of religion as a cloak to permit violations of the human rights of women, girls, and lesbian, gay, bisexual and transgender (LGBT) people.

Now more than ever, countries worldwide should prioritize the rights to health and well-being of *all* their people without discrimination and recognize that reproductive rights are clearly established and articulated under international law. These rights are interrelated and indivisible from all human rights and cannot be subordinated within a hierarchy of rights.

There is clear and unequivocal consensus by UN human rights treaty bodies and independent experts that reproductive rights are human rights, grounded in the Universal Declaration of Human Rights (UDHR) and the core principles underlying the human rights treaties. The human rights treaty bodies have consistently recognized and protected reproductive rights as a component of and essential to the realization of fundamental human rights, including the rights to health, life, equality, information, education, privacy, non-discrimination and protection from torture and other ill-treatment.

One of the great advances with respect to rights in the period since World War II was that, through the adoption of the Charter of the United Nations and of the Universal Declaration of Human Rights, it was recognized that rights are universal: they apply to everyone everywhere. In addition, these documents recognized that a core value undergirding the universal application of rights is dignity. The Charter of the United Nations provides: "We the peoples of the United Nations, determinedto reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. [...]" In keeping with the Charter, the UDHR begins with the assertion that: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...."

The concept of dignity carries with it a commitment to privacy and autonomy. Human rights advocates in the US and around the world know that rights are grounded in dignity and its embrace of privacy and autonomy. We submit that the values that are inherent in the concepts of dignity, privacy and autonomy do not permit the state to dictate that women must conceive or reproduce. Respect for dignity, privacy, and autonomy—the core values of universal rights—requires that these are matters for each and every person to decide on their own.

For example, the UN Human Rights Committee—tasked with monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR)—has consistently recognized that the right to privacy (article 17) obligates the state to ensure reproductive autonomy. It has also made clear

that the right to life (article 6) includes the right to access comprehensive reproductive health care, including that state regulation of abortion should not put the lives of women or girls at risk, subject them to ill-treatment, discriminate against them, arbitrarily interfere with their privacy, or lead them to resort to unsafe abortion.

The UN Committee Against Torture has found that denying or delaying safe abortion or post-abortion care, in particular, may amount to torture or other cruel, inhuman or degrading treatment. Similarly, the UN Committee on Economic, Social and Cultural Rights has concluded that the right to the highest attainable standard of health, set forth in in the UDHR and the International Covenant on Economic, Social and Cultural Rights, includes the right to sexual and reproductive health.

These rights, like all human rights protections, attach at birth. The UDHR provides clear language in the first article that is unequivocal: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

During the drafting of the declaration, the committee specifically considered, debated, and rejected an amendment that would have removed the specification that rights begin at birth. And while the American Convention on Human Rights (a regional treaty the United States has signed but not ratified) is the only human rights instrument that contemplates that the right to life may attach prenatally, the Inter-American Court of Human Rights has clarified that in regulating abortion, the protection of prenatal life does not prevail over other rights. In the 2012 case of *Artavia Murillo et al. (“in vitro fertilization”) v. Costa Rica*, the Inter-American Court struck down Costa Rica’s ban on the use of in vitro fertilization, which Costa Rica attempted to justify as a measure to protect the right to life prior to birth. In that case, the Court determined that, under the American Convention, the “right to life should not be understood as an absolute right, the alleged protection of which can justify the total negation of other rights” and that disproportionate restrictions on the exercise of other human rights due to absolute protection of the right to life “would be contrary to the protection of human rights” (paras 259 and 264).

Further, these rights are indivisible from other human rights. It is a tenet of human rights that all rights are universal, equal, interdependent, and interrelated. The preamble of UDHR begins by recognizing that the “equal and inalienable rights” of all members of humanity is the “foundation of freedom, justice, and peace.” The UDHR makes clear that each of the thirty articles in the declaration are equally important and that no state or individual can decide that some rights are more important than others. Indeed, the deprivation of rights in one area tends to create conditions for the deprivation of rights in others.

Of course, it is of great concern if the exercise of one person’s fundamental right impedes upon the realization of another’s. The ICCPR itself recognizes that this tension may arise. Article 18(1) recognizes the right to freedom of thought, conscience and religion, which includes both the “freedom to have or to adopt a religion or belief of [a person’s] choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” The Human Rights Committee in its General Comment No. 22 has emphasized that Article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice,” but—recognizing that religious exercise may affect others—does permit limitations on the freedom to *manifest* one’s religion or beliefs.

Further, the text of the treaty itself recognizes this. Under Article 18(3), states may regulate the manifestation of religion or belief if, and only if, such regulations “are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” The Committee has consistently clarified that the freedom of thought, conscience, and religion does not protect religiously motivated discrimination against women, or racial and religious minorities.

Thus, in order to protect and uphold the basic rights of all people, states may impose some limitations on acts manifesting religion or belief in order to protect the infringement of other people’s rights. These include limitations to ensure that health care providers do not impede access to reproductive health services. Yet, we continue to see in our work “conscientious objection” policies that allow providers to refuse to provide critical services to women and LGBT people, on the basis of conscience. In many instances, this increases discrimination in care and increased health disparities.

Marginalized groups, including women, young people, and LGBT individuals, are particularly at risk. Such was the case for a fourteen-year-old girl in Poland who was denied access to a legal abortion, for a pregnancy resulting from a rape, under claims of “conscience” by providers and health systems. She was compelled to undergo non-fact-based counseling, had her personal information disclosed to the press, and was removed by the state from her mother, who supported her decision to have an abortion. In 2012, the European Court of Human Rights issued its decision in her case in *P. and S. v. Poland* and determined Poland had violated her right to be free from degrading treatment, as well as her right to privacy. The Court also found that states have the obligation to limit the use of ‘conscientious objections’ in order to guarantee people access to lawful reproductive health services. Despite this clear legal ruling, however, the intersection between religious freedom and reproductive rights has continued to be a flashpoint in Poland. Contraception, particularly emergency contraception, remains difficult to access.

While this Commission has indicated an interest in prioritizing and ranking human rights, with a freedom of religion at the apex, as human rights defenders and activists we have seen firsthand how human rights are interdependent and indivisible. In recent years, we have often seen that authoritarian regimes may start by targeting reproductive rights, citing arguments of religion or “traditional values,” before expanding their attacks on other human rights.

This has been starkly visible in Turkey, where women’s rights movements were quick to sound the alarm about the Turkish presidency and government’s regressive approach to women rights and role in society. Restrictive amendments have limited access to sexual and reproductive health and rights, reports of gender-based violence have more than doubled, and female employment has decreased in a political context that prioritizes “traditional families.” The presidency of Recep Tayyip Erdogan has overseen a purging of academia and the civil service, the jailing of journalists and opposition politicians, and a broad crack down on civil society. Should it prioritize freedom of religion and conscience over other rights, the Commission on Unalienable Rights will further fuel authoritarian regimes’ readiness to “sacrifice” reproductive rights in the name of “traditional values.”

This same pattern has been displayed as well in Brazil. President Jair Bolsonaro has promoted extreme anti-choice religious views at the expense of gender and sexual and reproductive health and rights, stating that he would veto any bill to legalize abortion. Accusing advocates of sexual and reproductive health and rights of encouraging teens to have sex at a young age, Bolsonaro is opposed to and has condemned comprehensive sexuality education (CSE). For example, as a member of congress he joined

the evangelical caucus in labelling a proposed educational initiative to combat homophobia in schools a "gay kit" intended to "pervert" students. Bolsonaro appointed Damareo Alves as Minister of Women, Family and Human Rights, who has promoted abstinence for adolescents and student programs developed by anti-reproductive rights groups. Increasing barriers to access to science-based health information puts at risk Brazil's steadily decreasing teenage pregnancy rates and young people's right to access sexual and reproductive health services.

In times of crisis, human rights protections only become more important. Just recently, in response to the current pandemic, Hungary's national government invoked a state of emergency law that allows the government to rule by decree indefinitely, which in reality means that Prime Minister Viktor Orbán has absolute power to decide how long he can set aside and adopt laws without parliamentary or judicial scrutiny. Since consolidating his power in the name of fighting the spread of the illness, Orbán has cracked down on the press and proposed a new law blocking access to legal recognition for transgender people. Advocates fear this new unbalanced power dynamic will increase assaults on asylum rights, women's human rights, LGBT people's rights, and democracy as a whole.

We urge the United States to uphold and promote the international human rights framework contained in the Universal Declaration of Human Rights and in subsequent human rights treaties. Any attempt to undermine the international human rights system would put in jeopardy the rights and protections of the women, girls and all people for whom we stand alongside and fight for the realization of these universal rights.

Sincerely,

Center for Reproductive Rights
Human Rights Watch
International Women's Health Coalition

Organizational signers:

ABOFEM, Chile

Abortion Care Network, United States

Activists for Sexual and Reproductive Rights Global Network, United States

Advocates for Youth, United States

Advocating Opportunity, United States

Allard K. Lowenstein International Human Rights Clinic, Yale Law School, International

American Jewish World Service, International

American Medical Student Association, United States

Amnesty International USA, United States

Asia Pacific Forum on Women, Law and Development, International

Asia Pacific Transgender Network, International

Asian-Pacific Resource and Research Centre for Women (ARROW), International

ASSOCIATION DE LUTTE CONTRE LES VIOLENCES FAITES AUX FEMMES
EXTREME-NORD CAMEROUN (ALVF-EN), Cameroon

ASTRA Network, International

Balance Promoción para el Desarrollo y Juventud AC, Mexico

Bridges, International

Catholics for Choice, International

Center for Constitutional Rights, United States

Center for International Human Rights, Northwestern Pritzker School of Law, United States

Center for Women's Health & Human Rights, Suffolk University, United States

Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos, Peru

COC Netherlands, Netherlands

CODESER (Comité de Derechos Sexuales y Reproductivos Ecuador), Ecuador

Columbia Law School Human Rights Institute, United States

Consortio Latinoamericano en contra del Aborto Inseguro, International

Council for Global Equality, United States

CREA, International

Danish Family Planning Association, Denmark

DIVA for Equality, Fiji

Equality California, United States

Faculty of Political Sciences Sarajevo, International

FEDERACIÓN PLANIFICACIÓN FAMILIAR ESTATAL, Spain

Freedom Network USA, United States

Fundacion Desafio, Ecuador

Fundacion para Estudio e Investigacion de la Mujer, Argentina

Global Justice Center, International

Guttmacher Institute, United States

Hawaii Institute for Human Rights, United States
Health Global Access Project (Health GAP), International
Heartland Alliance International, International
Hirschfeld Eddy Foundation, International
Human Rights Advocates, United States
Human Rights and Gender Justice Clinic, CUNY School of Law, United States
Human Rights Campaign, United States
If/When/How: Lawyering for Reproductive Justice, United States
ILGA World, International
interACT: Advocates for Intersex Youth, International
International Action Network for Gender Equity & Law, International
International Association of Democratic Lawyers, International
International Civil Society Action Network (ICAN), International
International Planned Parenthood Federation, International
Ipas, International
Kaleidoscope Trust, International
KENYA SEX WORKERS ALLIANCE, Kenya
Korea Women's Associations United (KWAU), Republic of Korea
L' Associacio de Drets Sexuals i Reproductius, International
LatinoJustice PRLDEF, United States
Lesben- und Schwulenverband in Deutschland LSVD, Germany
LGBT+ Denmark, Denmark
Mitini Nepal, Nepal
MPact Global Action for Gay Men's Health & Rights, International
Mujer Y Salud en Uruguay – MYSU, Uruguay
NARAL Pro-Choice America, United States
National Abortion Federation, United States
National Birth Equity Collaborative, United States

National Center for Transgender Equality, United States

National Council of Jewish Women, United States

National Immigration Law Center, United States

National Organization for Women, United States

Organización de Trabajadoras Sexuales OTRAS, Spain

OutRight Action International, International

PAI, International

PFLAG National, United States

Planned Parenthood Federation of America, United States

Population Institute, United States

Program on Human Rights and the Global Economy at the Northeastern University School of Law, United States

Programa Feminista La Corriente, Nicaragua

Promundo-US, United States

RFSU - IPPF Sweden, Sweden

Rothschild Rights, International

Sawa for Development Association, Lebanon

Sendas, Ecuador

Sensoa, Belgium

SIECUS: Sex Ed for Social Change, United States

Silver State Equality-Nevada, United States

Synergia - Initiatives for Human Rights, International

T'ruah: The Rabbinic Call for Human Rights, United States

The Center for Health and Gender Equity (CHANGE), United States

The Global Justice Institute, International

The IWI: Institute For Feminist Policy Reform, International

U.S Women and Cuba Collaboration, International

Urgent Action Fund for Women's Human Rights, International

Women Enabled International, International
Women's Health in Women's Hands Community Health Centre, Canada
Women's International League for Peace and Freedom, US Section, United States
Women's Major Group, International
Women's March Global, International
Women's Health and Equal Rights Initiative, Nigeria
Woodhull Freedom Foundation, United States
Young Center for Immigrant Children's Rights
Youth Coalition for Sexual and Reproductive Rights (YCSRR), International
Youth Health Connect360, Malawi

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