

# CANARY IN THE COAL MINE: ABORTION & THE COMMISSION ON UNALIENABLE RIGHTS

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## ABSTRACT

This past July, the Trump administration announced the creation of a new body with a curious name—the “Commission on Unalienable Rights.” Secretary of State Mike Pompeo described the effort as an attempt to “ground our discussion of human rights in America’s founding principles.” However, universal human rights norms exist to hold states accountable: they cannot be defined, redefined, or limited based on the demands or viewpoints of a single government. While Secretary Pompeo claims that he wants to depoliticize human rights, this commission does the exact opposite.

The establishment of this panel is yet another offense on the international system as part of the Trump administration’s regressive agenda. This action follows a clear pattern of ideological attacks on US engagement with the human rights system and the norms they uphold. Such recent examples, as this submission will discuss in greater detail, include withdrawing from the Human Rights Council, erasing reproductive rights from human rights reports, and cutting funding to the Organization of American States in an attempt to censor abortion-related speech. Additionally, the denial of abortion care to women held in detention at the US border, the problematic nomination of Andrew Bremberg as US Ambassador to the Office of the United Nations and Other International Organizations in Geneva, and the removal of language referencing sexual and reproductive health care in UN Security Council Resolution 2467 also

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fall into the administration's pattern of undermining the importance of women's health and bodily autonomy.

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## INTRODUCTION

This past July, the Trump administration announced the creation of a new body with a curious name—the “Commission on Unalienable Rights” (“Commission”). Secretary of State Mike Pompeo described the effort as an attempt to “ground our discussion of human rights in America’s founding principles,”<sup>1</sup> which he hopes will provide a new global blueprint for human rights.<sup>2</sup> However, universal human rights norms exist to hold states accountable: they cannot be defined, redefined, or limited based on the demands or viewpoints of a single government. While Secretary Pompeo claims that he wants to depoliticize human rights, this commission does the exact opposite.

The Commission is yet another offense on the international system of human rights resulting from the Trump administration’s regressive agenda. Its establishment follows a clear pattern of ideological attacks on the United States’ (“U.S.”) engagement with the human rights system and the norms it upholds, including on sexual and reproductive rights. This article will consider the following issues to demonstrate how the systematic attacks on abortion rights and women’s bodily autonomy by the Trump administration are instructive in understanding the potential impact of the Commission: 1) the current status of abortion under international human rights law, and where the United States stands in relation to those obligations; 2) the pattern of U.S. actions to undermine human and reproductive rights; 3) the composition of the Commission on Unalienable Rights and the Commissioners’ viewpoints on abortion; and 4) the viewpoints and positions of key U.S. officials in foreign policy and diplomatic positions.

The article will argue that abortion is the proverbial canary in the coal mine—a trial run on how to maximize the Administration’s systematic efforts to undermine and erode the human rights framework and its norms with antiquated understandings grounded in religion and conservative values.

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1. Michael R. 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> [<https://perma.cc/Y3TC-VLR2>].

2. Michael R. Pompeo, U.S. Sec’y of State, *Interview: Secretary Michael R. Pompeo with Tony Perkins of Washington Watch* (Oct. 23, 2019), <https://www.state.gov/secretary-michael-r-pompeo-with-tony-perkins-of-washington-watch/> [<https://perma.cc/69R4-FDPZ>].

## I. ABORTION AND INTERNATIONAL HUMAN RIGHTS LAW

Since the 1970s, when the Supreme Court decision in *Roe v. Wade* recognized access to abortion as a constitutional right for women in the United States, and when key human rights treaties were developed and ratified, the United States and the human rights framework have been on opposite trajectories. On the domestic front, a campaign to undermine the protections of *Roe* and access to abortion—at home and abroad—began almost immediately.<sup>3</sup> It's no coincidence that the Helms Amendment, the first US abortion restriction on foreign assistance, was passed in 1973.<sup>4</sup> Meanwhile, the international human rights system started slowly but surely to recognize abortion as a protected fundamental right. This section examines these departing trajectories to identify how far apart the United States currently stands from the human rights system on this issue.

### A. Abortion as a Protected Right

In the 25 years since the political commitments to eliminate unsafe abortions made at the International Conference on Population and Development<sup>5</sup> and the Fourth Women's World Conference,<sup>6</sup> access to safe abortion has become firmly entrenched as a protected right under international human rights law.<sup>7</sup> At a minimum, under human rights standards, “[s]tates have an obligation to refrain from the use of criminal law to punish women for ending a pregnancy, as

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3. Sneha Barot, *Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment*, GUTTMACHER POLICY REVIEW (Sept. 13, 2014), <https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment> [https://perma.cc/X6DN-N7YL].

4. *Id.*

5. International Conference on Population and Development, Sept. 5-13, 1994, *Programme of Action*, ¶ 8.25.

6. Fourth World Conference on Women, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, ¶ 106(k).

7. United Nations Working Group on the issue of discrimination against women in law and in practice, Policy Paper: Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends (Oct. 2017), <https://www.ohchr.org/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf> [https://perma.cc/VGG4-DDM5] [hereinafter Women's Autonomy].

well as to repeal restrictive laws and policies which put women and girls' health, safety and lives at risk.”<sup>8</sup>

International and regional treaties that are now considered to protect access to abortion include the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention against Torture and Others Forms of Cruel, Inhuman and Degrading Treatment or Punishment (“CAT”).<sup>9</sup> Under these treaties, abortion is protected as a matter of a multitude of complementary and intersecting rights, including to health, life, non-discrimination, privacy, and to be free from torture or cruel, inhuman, or degrading treatment.<sup>10</sup> Most recently, the Human Rights Committee (“HRC”), which monitors compliance with the ICCPR, stated in its General Comment on the right to life that:

Restrictions on the ability of women or girls to seek abortion must not, *inter alia*, jeopardize their lives, subject them to physical or mental pain or suffering which violates article 7, discriminate against them or arbitrarily interfere with their privacy. States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe

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8. United Nations Office of the High Commissioner for Human Rights, *All states must ensure access to safe and legal abortion as a matter of human rights, say UN experts* (Sept. 28, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25066&LangID=E> [https://perma.cc/27L8-VSR5].

9. See e.g. U.N. Human Rights Committee, *Mellett v. Ireland*: Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2324/2013, U.N. Doc. CCPR/C.116/D/2324/2013 (Jun. 9, 2016). Other treaties that protect abortion access include: International Covenant on Economic Social and Cultural Rights (“ICESCR”); Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”); Convention on the Rights of the Child (“CRC”); European Convention on Human Rights; Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and American Convention on Human Rights.

10. Center for Reproductive Rights, *Safe and legal abortion is a woman's human right*, (Oct. 2011), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Safe%20and%20Legal%20Abortion%20is%20a%20Womans%20Human%20Right.pdf> [https://perma.cc/EB8C-ZRSU].

abortions, and they should revise their abortion laws accordingly.<sup>11</sup>

Furthermore, taking the standards such as those set out in the ICCPR as a baseline, some human rights experts have begun to recognize that the denial of access to abortion and criminal abortion laws may violate additional state obligations beyond those discussed above. For example, the United Nations (“U.N.”) Special Rapporteur on extrajudicial, summary or arbitrary executions has found that absolute abortion bans can amount to a gender-based arbitrary killing by a state,<sup>12</sup> and that conditional access to abortion may constitute an arbitrary deprivation of life.<sup>13</sup> Similarly, the U.N. Working Group on discrimination against women in law and in practice has found that the right to safe abortion services is an “equality right.”<sup>14</sup>

While the United States has ratified a relatively low number of human rights treaties,<sup>15</sup> those by which it is bound, including the ICCPR and CAT, have made clear that abortion is protected under their provisions. In addition, as a signatory to other treaties that protect abortion, including the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), the International Covenant on Economic Social and Cultural Rights (“ICESCR”), and the Convention on the Rights of the Child (“CRC”), the United States may not take any actions that “defeat the object and purpose” of that treaty.<sup>16</sup> In a treaty like CEDAW, where access to sexual and reproductive rights, including abortion, has been found to be fundamental not only to its specific provisions, but also its central obligation to eliminate discrimination and ensure equality,<sup>17</sup> a

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11. Human Rights Comm., General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, ¶ 8, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

12. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, ¶ 94, U.N. Doc. A/HRC/35/23 (Jun. 6, 2017).

13. *Id.* at ¶ 95.

14. Women's Autonomy, *supra* note 7.

15. *Status of Ratification of 18 International Human Rights Treaties: United States*, Office of the High Commissioner for Human Rights, <https://indicators.ohchr.org/> [<https://perma.cc/QS68-SYSG>] (last visited Nov. 5, 2019).

16. Vienna Convention on the Law of Treaties, May 23, 1969, art. 18, U.N.T.S. 1155.

17. Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 21, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010).

strong argument exists that barriers to safe abortion would violate the object and purpose of the treaty.

However, despite these clear and consistent calls from human rights treaty bodies and experts, the U.S. government continues to violate its human rights obligations related to abortion (see Section III *infra*), assert that there is no “international consensus” on abortion,<sup>18</sup> and, under the Trump administration, take increasingly regressive steps to undermine this fundamental aspect of the international human rights regime.

## B. U.S. Violations of Human Rights Obligations on Abortion

As articulated above, abortion is widely recognized and understood to be a human right. Under the Trump administration, there are numerous examples of the United States’ violations of this human rights obligation. Recent domestic actions, including state abortion restrictions and the presidentially imposed Global Gag Rule, an executive action that imposes abortion restrictions on non-U.S. nongovernmental organizations (“NGOs”) receiving either direct support or sub-grants of U.S. global health assistance, indicate increasing efforts to erode human rights, in particular women’s rights and the right to abortion, both at home and abroad. A variety of human rights experts and bodies have found that the United States has failed to meet its human rights obligations in this respect.

In preparing for its forthcoming review of the United States, the HRC has requested information on the impact of abortion laws and policies—including state abortion laws and the Global Gag Rule—on the rights of women protected under the ICCPR and their compatibility with the treaty.<sup>19</sup> Similarly, on his mission to the United States, the U.N. Special Rapporteur on extreme poverty and human rights noted the link between poverty and the realization of human rights, including as it relates to the rights to health and privacy. In particular, he noted how “[l]ow-income women who would like to exercise their constitutional, privacy-derived right to access abortion services face legal and practical obstacles, such as mandatory waiting

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18. See Alexander M. Azar, U.S. Sec’y of Health & Human Services, *Remarks on Universal Health Coverage, U.N. General Assembly Press* (Sept. 23, 2019), <https://www.hhs.gov/about/leadership/secretary/speeches/2019-speeches/remarks-on-universal-health-coverage.html> [https://perma.cc/58YW-78JG].

19. Human Rights Comm., List of issues prior to submission of the fifth periodic report of the United States of America, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019).

periods and long driving distances to clinic. This lack of access to abortion services traps many women in cycles of poverty.”<sup>20</sup>

Further, the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions examined the Global Gag Rule as an example of a policy that violates normative pillars of international human rights and humanitarian law. She found the policy is, “flawed on evidentiary and public health grounds, imperils the work of health-care providers, interferes with their freedom to practice to the level of recognized professional standards and erodes the integrity of health systems and services.”<sup>21</sup> Consequently, she found that “[t]he main outcome of such a policy is likely to be an increase in the number of unlawful deaths.”<sup>22</sup>

Finally, the U.N. Working Group on the issue of discrimination against women in law and in practice expressed concern over U.S. violations of rights to reproductive and sexual health, including the long-standing congressionally imposed Helms Amendment and criminal abortion laws. The Working Group recommended the repeal of the Helms Amendment,<sup>23</sup> as well as a host of other steps to ensure that women could access and exercise their right to abortion.<sup>24</sup>

These examples, while not exhaustive, are emblematic of the United States’ failure to comply with its human rights obligations, specifically with respect to sexual and reproductive health and rights and the right to abortion. Such flagrant disrespect for human rights is deeply problematic, and undermines international law and the United States’ obligations as part of the international system.

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20. Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, ¶56, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018), <https://ibw21.org/editors-choice/special-rapporteur-on-extreme-poverty-and-human-rights> [<https://perma.cc/LA75-JDW2>] [hereinafter *Report of the Special Rapporteur*].

21. General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, ¶ 78, U.N. Doc. A/73/314 (Aug. 7, 2018), <https://undocs.org/pdf?symbol=en/A/73/314> [<https://perma.cc/E4AJ-YEFL>] (footnote omitted).

22. *Id.* at ¶ 80.

23. Human Rights Council, 32nd Sess., Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America, U.N. Doc A/HRC/32/44/Add.2 (Aug.4, 2016), at 22, <https://undocs.org/A/HRC/32/44/Add.2> [<https://perma.cc/FUU3-R848>].

<sup>24</sup> *Id.* at 23–24.

## II. PATTERN OF U.S. ACTIONS TO UNDERMINE HUMAN & REPRODUCTIVE RIGHTS

The United States' failure to comply with its own human rights obligations has been paired under the Trump administration with a broader policy to disengage itself from and erode the human rights system, in particular as it relates to sexual and reproductive rights. Using this lens, it becomes clear that such actions are dangerous precursors to the establishment of the Commission, whose work will seek to promote an alternative understanding of human rights.

### A. Disengagement from the Human Rights Regime

While the United States has long positioned itself as a leader in the arena of human rights,<sup>25</sup> it has failed to meaningfully internalize and comply with its international human rights obligations. Its leadership on human rights has very much been focused on the “other”<sup>26</sup>—an external world that is desperately in need of an aspirational framework to improve itself, while the United States luxuriates in the perfection of its domestic protections, many of which originate from the progressive and modern year 1791. Noted international law scholar Louis Henkin once stated that “in the cathedral of human rights, the United States is more like a flying buttress than a pillar—choosing to stand outside the international structure supporting the international human rights system, but without being willing to subject its own conduct to the scrutiny of that system.”<sup>27</sup>

Despite this fundamental flaw in its approach to the international human rights framework, the United States has at least

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25. See e.g. Barack H. Obama, *Nobel Lecture: A Just and Lasting Peace* (Dec. 10, 2009), <https://www.nobelprize.org/prizes/peace/2009/obama/lecture/> [<https://perma.cc/7MKQ-N2NZ>]. See also Sophie Tatum & Keith Allen, *Jimmy Carter: The U.S. has 'lost its place' as a leader in human rights*, CNN (Jul. 24, 2018), <https://www-m.cnn.com/2018/07/24/politics/jimmy-carter-human-rights/index.html?r=https%3A%2F%2Fwww.google.com%2F> [<https://perma.cc/3WJC-9X9V>].

26. Kenneth Roth, *The Charade of US Ratification of International Human Rights Treaties*, 1 CHI. J. INT'L L. 347 (2000).

27. Anne-Marie Slaughter, *Louis Henkin (1917-2010): The Power of His Ideas Live On*, OPINIO JURIS (Oct. 10, 2010), <http://opiniojuris.org/2010/10/22/louis-henkin-1917-2010-the-power-of-his-ideas-live-on> [<https://perma.cc/MG3X-6R89>].

consistently aligned itself with those states who seek to promote human rights as a priority and sought to justify its actions as legal under international law. Even the Bush administration made the effort to defend the legality of its torture program under international law, including the Geneva Conventions. It's a low bar, but it does demonstrate that even at its lowest points, the United States recognized and sought legitimacy under these international legal frameworks.

The Trump administration on the whole has taken an antagonistic tack to the human rights system. This includes, as discussed in this section, the U.S. disengagement from and rejection of human rights bodies and processes, as well as a gutting of the staffing and expertise of the State Department.

As a starting point, the administration has withdrawn the United States from the U.N. Human Rights Council over the Council's apparent hypocrisy,<sup>28</sup> and has failed to submit overdue reports to U.N. treaty bodies, including to the Committee against Torture, the Committee on the Elimination of All Forms of Racial Discrimination and the HRC.<sup>29</sup> In addition, for the first time since 1995, an American candidate nominated to the HRC was not elected, which has been interpreted by some as a referendum on the U.S.'s commitment to human rights.<sup>30</sup>

The administration has also responded poorly to critiques of the U.S.'s human rights records by U.N. experts and bodies. For example, former U.N. Ambassador Nikki Haley took the initiative to write an op-ed in the conservative flagship *National Review* in

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28. Michael Pompeo, U.S. Sec'y of State, *Remarks on the UN Human Rights Council* (Jun. 19, 2018), <https://www.state.gov/remarks-on-the-un-human-rights-council/> [<https://perma.cc/KE7V-BB7L>]. It should be noted that the George W. Bush Administration did choose not to join the Human Rights Council when it was formed in 2006 after the disbanding of the Human Rights Commission.

29. U.N. Office of the High Commissioner for Human Rights, U.N. *Treaty Body Database: Reporting status for United States of America*, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN) [<https://perma.cc/9FN7-2FG3>] (retrieved October 1, 2019).

30. Jamil Dakwar (@jdakwar), Twitter (Jun. 15, 2018, 11:09 AM), <https://twitter.com/jdakwar/status/1007641301104414720?s=21> [<https://perma.cc/W8Z6-779D>]. See also Patrick Goodenough, *Unprecedented: Haley-Backed Candidate for Key UN Human Rights Committee Fails to Win Seat*, CNSNEWS.COM (Jun. 15, 2018), [https://www.cnsnews.com/news/article/patrick-goodenough/unprecedented-haley-backed-candidate-key-un-human-rights-committee?utm\\_source=sumome&utm\\_medium=twitter&utm\\_campaign=sumome\\_share](https://www.cnsnews.com/news/article/patrick-goodenough/unprecedented-haley-backed-candidate-key-un-human-rights-committee?utm_source=sumome&utm_medium=twitter&utm_campaign=sumome_share) [<https://perma.cc/7UHE-9S8X>].

response to the report on poverty in the U.S. by the Special Rapporteur on extreme poverty and human rights,<sup>31</sup> where she deemed the report “patently ridiculous” and characterized it as both a waste of U.N. resources and U.S. taxpayer dollars.<sup>32</sup> Her response also demonstrates how the Trump administration continues to further the persistent posture of the U.S. government (whether Democrat or Republican) that the U.S. must be considered as beyond reproach when it comes to human rights, especially as compared to other countries:

It is patently ridiculous for the U.N. to spend its scarce resources—more of which come from the United States than from any other country—studying poverty in the wealthiest country in the world, a country where the vast majority is not in poverty, and where public and private-sector social safety nets are firmly in place to help those who are. Instead, the U.N. might have studied poverty in the Congo, where 60 percent of the entire population lacks the basics of food and electricity. Or Burundi, where the typical annual income is \$280. Or Venezuela, where narcostate dictators have driven a once prosperous country into the ground with an inflation rate over 25,000 percent, and where diseases that were once thought eliminated are now reappearing.<sup>33</sup>

Human rights, as it were, are not for Americans.

The United States’ withdrawal from the international and human rights systems is also evidenced not only in how the Trump administration has engaged with the substantive issues, but also in its manner of engagement and the posture of those it appoints to represent the United States internationally. Key diplomatic appointees responsible for U.S. engagement with human rights, including Secretary of State Mike Pompeo, former U.S. Ambassador to the U.N. Nikki Haley, and the recently confirmed Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor, Robert A. Destro, have all expressed views that are antithetical to the human rights framework, including, and often in particular the right to abortion (see Section V *infra*). In addition, the administration has

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31. Report of the Special Rapporteur, *supra* note 20.

32. Nikki Haley, *The United Nations’ Patently Ridiculous Report on American Poverty*, NATIONAL REVIEW (Jul. 9, 2018), <https://www.nationalreview.com/2018/07/united-nations-report-on-american-poverty-distorts-and-misrepresents/> [https://perma.cc/H275-N86E].

33. *Id.*

defunded key U.N. agencies, such as the United Nations Population Fund,<sup>34</sup> and is currently over \$1 billion in arrears in its U.N. dues (largely owed to peacekeeping funds).<sup>35</sup>

This trend is exacerbated by a gutted State Department. A recent study by the Department's Office of the Inspector General found that the hiring freeze put in place by former Secretary of State Rex Tillerson affected State's ability to respond to emerging crises, such as in Venezuela, and resulted in a "reduced focus in areas such as human rights engagement, political reporting, and development of contacts in foreign governments and civil society to advance U.S. interests."<sup>36</sup> At a more fundamental level, reduced staffing and vacancies have also led to the absence of U.S. leadership in key meetings at the U.N., with the longest vacancy in the role of the U.S. Ambassador to the U.N. in U.S. history following Nikki Haley's departure in December 2018, and with interns often replacing senior officials in meetings.<sup>37</sup>

While the U.S.'s engagement with the human rights system has never been as strong as it purports, under the Trump administration, this relationship has gone from tepid to actively hostile. This change has created the necessary preconditions and a vacuum in which regressive understandings of human rights as put forth by bodies like the Commission can thrive.

## B. Erosion of Human Rights Protections for Sexual and Reproductive Rights, Including Abortion

Since its start, the Trump administration has continually attempted to undermine reproductive rights and human rights through a variety of actions. These efforts manifest in multiple ways: 1) erosion of how the human rights framework, including the right to

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34. Press Release, U.N. Population Fund, *Statement by UNFPA on U.S. Decision to Withhold Funding* (Apr. 4, 2017), <https://www.unfpa.org/press/statement-unfpa-us-decision-withhold-funding> [<https://perma.cc/45UU-ZWTN>].

35. Colum Lynch, *Trump Administration Takes Down Biden's Legacy -- at the U.N.*, FOREIGN POL'Y (Sept. 23, 2019) <https://foreignpolicy.com/2019/09/23/trump-administration-takes-down-bidens-legacy-at-the-u-n> [<https://perma.cc/BXC8-YFN5>].

36. U.S. Dept. of State Office of the Inspector General, *Review of the Effects of the Department of State Hiring Freeze*, at 17-18 (Aug. 2019), <https://www.stateoig.gov/system/files/isp-i-19-23.pdf> [<https://perma.cc/6BVG-PZXM>].

37. Kacie Candela, *Pulling Back the Curtain on the US Mission to the UN*, PASSBLUE (May 22, 2019), <https://www.passblue.com/2019/05/22/pulling-back-the-curtain-on-the-us-mission-to-the-un> [<https://perma.cc/E8BV-J7R8>].

abortion, is conceived and developed; and 2) erosion of such rights in practice. Ultimately these problematic moves will lead to long-term harm. A few examples of the Trump administration's actions include erasing language on sexual and reproductive health and rights from official government documentation, cutting funds to human rights organizations, and enacting restrictive policies. The following section will showcase these examples in greater detail, and reveal the administration's efforts to undermine and redefine the human right to abortion.

## 1. Eroding the Human Rights Framework

### i. Erasing Language on Sexual and Reproductive Health and Rights

The Trump administration has attempted to undermine reproductive rights and human rights by erasing reproductive rights from human rights reports and other documents. In 2018, the U.S. State Department's annual human rights report eliminated sections on reproductive rights.<sup>38</sup> As one State official said at the time, “[t]his sends a clear signal that women's reproductive rights are not a priority for this administration, and that it's not even a rights violation we must or should report on.”<sup>39</sup> Furthermore, in the past year, various reports indicate that the Trump administration has consistently attempted to replace the word ‘gender’ with ‘women and girls’ in negotiated documents at the UN, particularly during the Commission on the Status of Women session and others.<sup>40</sup> This is yet another example of the Trump administration's efforts to undermine

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38. Ally Boguhn, *Trump's State Department Erases Reproductive Rights From Human Rights Report*, REWIRE.NEWS (Apr. 23, 2018 2:44 PM), <https://rewire.news/article/2018/04/23/trumps-state-department-erases-reproductive-rights-human-rights-report/> [https://perma.cc/94R4-2BNA].

39. Nahal Toosi, *State Department report will trim language on women's rights, discrimination*, POLITICO (Feb. 21, 2018 10:03 PM), <https://www.politico.com/story/2018/02/21/department-women-rights-abortion-420361> [https://perma.cc/4YF5-AHF9].

40. Liz Ford, *US accused of trying to dilute global agreements on women's rights*, THE GUARDIAN (Mar. 18, 2019), <https://www.theguardian.com/global-development/2019/mar/18/us-accused-of-trying-to-dilute-international-agreements-un-commission-status-of-women> [https://perma.cc/J2NE-UM8T]; Julian Borger, *Trump administration wants to remove 'gender' from UN human rights documents*, THE GUARDIAN (Oct. 25, 2018), <https://www.theguardian.com/world/2018/oct/24/trump-administration-gender-transgender-united-nations> [https://perma.cc/YK5K-G4QX].

and narrow the scope of human rights protections, in this case to cover only its gendered assumptions of what women and girls should be, rather than what all people are entitled to as humans.

This past April, the U.N. Security Council adopted Resolution 2467 on Women, Peace and Security during the Council's annual Open Debate on Conflict-Related Sexual Violence. Although the resolution purports to address the needs of victims of sexual violence in conflict, it contains no direct references to reproductive health—a key component of necessary and comprehensive medical care. This last-minute compromise was made to avoid a certain veto by the U.S. government. In the months leading up to the adoption, the U.S. made clear that it planned to oppose any U.N. documents that referenced sexual and reproductive health care. Though it began with an ambitious list of topics, the resolution as adopted by the Council was significantly pared back, particularly concerning women's bodily autonomy and choice. The language was stripped from the draft resolution less than a day before it was put before the Council, in a shameful concession to U.S. hegemony and a sign of the current state of affairs and what to expect from the United States at the Security Council going forward.<sup>41</sup>

Continuing its attacks on reproductive rights, ahead of the most recent U.N. General Assembly, the U.S. made efforts to coordinate states to join a coalition and sign a statement “opposing ‘harmful’ U.N. policies that promote sexual and reproductive health and rights.”<sup>42</sup> It is worth taking note of the U.S.’ leadership on this attempt to undercut the development of human rights at the U.N. Additionally, speaking on behalf of the U.S., the Health and Human Services Secretary Alex Azar made a troubling statement that “there is no international right to an abortion.”<sup>43</sup> This declaration is yet

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41. See *In Hindsight: Negotiations on Resolution 2467 on Sexual Violence in Conflict*, WHAT'S IN BLUE (May 2, 2019), <https://www.whatsinblue.org/2019/05/in-hindsight-negotiations-on-resolution-2467-on-sexual-violence-in-conflict.php#> [https://perma.cc/2AMJ-PBA4].

42. Liz Ford, *Letter suggests US is rallying UN member states to oppose abortion*, GUARDIAN (Sep. 23, 2019), <https://www.theguardian.com/global-development/2019/sep/23/leaked-letter-suggests-us-is-rallying-un-member-states-to-oppose-abortion> [https://perma.cc/79HF-6MVA].

43. Azar, *supra* note 18; Sarah McCammon, *At U.N., Trump Administration Professes ‘No International Right To An Abortion’*, NPR (Sept. 23, 2019), <https://www.npr.org/2019/09/23/763496171/at-u-n-trump-administration-professes-no-international-right-to-an-abortion> [https://perma.cc/G5RY-QGAL].

another public and high-level rejection of what has been built and achieved by consensus in the international human rights regime.<sup>44</sup>

## ii. Funding Cuts to Human Rights Organization

In March 2019, Secretary of State Mike Pompeo announced that the U.S. will cut its assistance to the Organization of American States (“OAS”), based on claims that its agencies are lobbying for abortions in violation of the Siljander Amendment, which prohibits the use of U.S. funds to lobby for or against abortion. As a quasi-governmental body, OAS recommendations are expert guidance, not lobbying. The OAS and its subsidiary bodies, including the Inter-American Commission on Human Rights, work to ensure the fundamental human rights of women and girls living in member states. Threatening these institutions’ ability to carry out their mandate through the U.S.’ power of the purse, and specifically targeting abortion-related speech, is both unconscionable and illegal. By using the Siljander Amendment to justify decreasing contributions to the OAS on purely ideological grounds, the United States is censoring free speech and attempting to undermine the development of human rights, in particular the right to abortion, around the world.<sup>45</sup>

## 2. Eroding Human Rights in Practice

### i. Restrictive Policies

The Global Gag Rule and the Domestic Gag Rule represent two policies under the Trump administration aimed at restricting abortion access, and both policies are indicative of the attempts to erode the right to abortion as evidenced in practice. These destructive rules are intended to restrict access to necessary services and silence the conversation around abortion, ultimately causing great harm to women’s health and their lives..

Within two days of taking office, Trump launched his administration’s first attack on reproductive rights and abortion by reinstating the deadly Global Gag Rule (also known as the Mexico

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44. See Section I. A. *supra*.

45. See *Pompeo Whacks OAS Contribution, Escalating Administration’s Crackdown on Reproductive Rights*, PAI (Mar. 28, 2019), <https://pai.org/newsletters/pompeo-whacks-oas-contribution-escalating-administrations-crackdown-on-reproductive-rights/> [https://perma.cc/Q4D7-J4CT].

City Policy and officially termed “Protecting Life in Global Health Assistance”). The Global Gag Rule is a political football put in place by every Republican president since Ronald Reagan and removed by every Democratic president. The policy prohibits foreign NGOs that receive U.S. government aid—previously family planning aid, but now under the Trump administration it has been expanded to cover all global health assistance—from providing abortions or information about the procedure.<sup>46</sup>

Since the Global Gag Rule has been enacted, a number of harmful impacts have already been documented: anticipated increased rates of maternal mortality; detrimental impacts on HIV and AIDS services; disproportionately harmful impacts on rural and vulnerable communities, including youth, LGBTQ people, sex workers, people living with disabilities, and refugees; and civil society organizations left confused over the application of and prohibitions within the policy, leading to a chilling effect where NGOs over-censor themselves over fear of losing funding.<sup>47</sup> To put these impacts into perspective, as a result of their lost funding and reduced services, Marie Stopes International (MSI) estimates that more than 1.4 million women will no longer have access to contraception services from a trained MSI provider, resulting in an extra 1.8 million unintended pregnancies, 600,000 unsafe abortions, and 4,600 avoidable maternal deaths.<sup>48</sup> The International Planned Parenthood Federation (IPPF) faces similar service cutbacks, predicted to hamper its work and “ability to prevent 20,000 maternal deaths, 4.8 million unintended pregnancies, and 1.7 million unsafe abortions.”<sup>49</sup>

The Domestic Gag Rule, which was proposed last year by the Trump administration and recently went into effect even as legal

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46. See *Do You Really Know the Global Gag Rule?*, PAI (Aug. 2019), <http://trumpglobalgagrule.pai.org/wp-content/uploads/2019/09/GGR-FAQ.pdf> [<https://perma.cc/5Z6Q-JP7B>].

47. See Global Justice Center & CHANGE, *Censorship Exported: The Impact of Trump’s Global Gag Rule on the Freedom of Speech and Association* (Jan. 2019), [http://www.globaljusticecenter.net/files/Censorship\\_Exported\\_Impact\\_of\\_Trumps\\_GGR.pdf](http://www.globaljusticecenter.net/files/Censorship_Exported_Impact_of_Trumps_GGR.pdf) [<https://perma.cc/FDV5-FPMV>].

48. The Global Gag Rule: A world without choice, MARIE STOPES INTERNATIONAL, <https://mariestopes.org/what-we-do/our-approach/policy-and-advocacy/the-global-gag-rule-a-world-without-choice/> [<https://perma.cc/2SU8-KBF2>] (last visited Oct. 23, 2019).

49. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018*, 40 (June 2018), [http://www.genderhealth.org/files/uploads/change/publications/Prescribing\\_Chaos\\_in\\_Global\\_Health\\_full\\_report.pdf](http://www.genderhealth.org/files/uploads/change/publications/Prescribing_Chaos_in_Global_Health_full_report.pdf) [<https://perma.cc/W54Y-WL89>]; Global Justice Center & CHANGE, *supra* note 47.

challenges remain, is comprised of changes to the regulations governing the Title X Family Planning Program, issued by the Department of Health and Human Services. The Domestic Gag Rule bans U.S. health centers that receive Title X funding from performing, promoting, referring for, or supporting abortion as a method of family planning. Even though Title X money could never be used to fund abortions due to the restrictions applied by the Hyde Amendment, which prohibits the use of federal funds to provide abortion services with limited exceptions for rape, incest and life endangerment, the new rule goes further in its restrictions of providers' speech. The Domestic Gag Rule limits access to health services and care with no affordable alternatives.

The Domestic Gag Rule is also already resulting in harmful impacts, which will be disproportionately felt by low-income women living in the United States. Planned Parenthood, which serves 40% of the Title X program patients,<sup>50</sup> announced it would withdraw from the Title X program rather than comply with the Domestic Gag Rule, resulting in a loss of about \$60 million in funds.<sup>51</sup> Since the policy only recently went into effect, the full results of its impact remains to be seen.

As shown, these policies result in a number of harms. Not only do they curb access to abortion services, but they also cause censorship by limiting the free speech of providers with respect to abortion. Further, the Global Gag Rule has weakened advocacy networks and partnerships “by causing self-censorship, withdrawal from membership, and anxiety, tension, and friction within coalition meetings between compliant and non-compliant members.”<sup>52</sup> As a result, the policy is impacting broader advocacy efforts—for example in Senegal—where Population Action International (“PAI”) noted that it is “affecting advocacy efforts to revive a long-awaited sexual and reproductive health law that would allow for termination of

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50. Anna North, *Planned Parenthood leaves federal funding program due to Trump administration rule*, VOX (Aug. 19, 2019), <https://www.vox.com/policy-and-politics/2019/8/14/20805628/planned-parenthood-title-x-trump-birth-control> [https://perma.cc/2YYZ-7RYG].

51. Pam Belluck, *Planned Parenthood Refuses Federal Funds Over Abortion Restrictions*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/health/planned-parenthood-title-x.html> [https://perma.cc/XA6A-A9UW].

52. Global Justice Center & CHANGE, *supra* note 47; CHANGE, *supra* note 49, at 37.

pregnancy in the instance of rape or incest.”<sup>53</sup> Ultimately, as indicated by the numbers above, the impact of these policies will result in an increase in unsafe abortions and maternal mortality rates. In short, women will die.

By enacting these restrictive policies, erasing language from human rights documents, and cutting funding to human rights organizations, the United States is attempting to stunt the development of and erode how the human right to abortion is conceived, and undermine this right in practice by limiting access to abortion services and censoring providers’ speech.

### III. REPLACEMENT: THE COMMISSION ON UNALIENABLE RIGHTS

The policies and acts described above must inform how we understand the State Department’s new Commission on Unalienable Rights. The Commission was created with the stated purpose of providing the Secretary of State with “fresh thinking about human rights discourses” and to propose “reforms of human rights discourses where it has departed from our nation’s founding principles of natural law and natural rights.”<sup>54</sup> In announcing the Commission, Secretary Pompeo made clear that it will be the launching point for the United States to fully redefine and disengage itself from the international human rights framework, in the creation of which it was instrumental, by declaring the Commission’s work to be “one of the most profound reexaminations of the unalienable rights in the world since the 1948 Universal Declaration [of Human Rights].”<sup>55</sup> He further stated that the Commission would be tasked with answering a series of questions that have already been answered many times over by international human rights treaties and experts:

I hope that the commission will revisit the most basic of questions: What does it mean to say or claim that something is, in fact, a human right? How do we know or how do we determine whether that claim that this or that is a human right, is it true, and therefore,

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53. *Access Denied: Senegal*, PAI (Dec. 11, 2018), <https://trumpglobalgagrule.pai.org/access-denied-senegal/> [https://perma.cc/VLG7-WYX2].

54. U.S. Dept. of State, Charter of the Department of State Commission on Unalienable Rights, <https://www.justsecurity.org/wp-content/uploads/2019/06/charter-commission-unalienable-rights.pdf> [https://perma.cc/H2RM-PWYE] [hereinafter Commission Charter].

55. Michael R. Pompeo, U.S. Sec’y of State, Remarks to the Press (Jul. 8, 2019), <https://www.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press-3/> [https://perma.cc/NZS2-JGKX].

ought it to be honored? How can there be human rights, rights we possess not as privileges we are granted or even earn, but simply by virtue of our humanity belong to us? Is it, in fact, true, as our Declaration of Independence asserts, that as human beings, we—all of us, every member of our human family—are endowed by our creator with certain unalienable rights?<sup>56</sup>

While in isolation, the purpose and work of the Commission may seem perhaps an unnecessary but interesting thought experiment, in the context of the Trump administration's retrenchment from and erosion of human rights, in particular women's rights, it is clear that it is a part of the pattern of the administration's persistent attacks on the international human rights framework. Secretary Pompeo has in discussing the need for the Commission frequently denigrated the very concept of "human rights" and shown his disdain for the system it upholds, stating that "rights claims are often aimed at rewarding interest group and dividing humanity into subgroups"<sup>57</sup> and that the term "rights" is often used to describe something that is "a mere preference."<sup>58</sup>

In addition, Secretary Pompeo made it clear that he hopes that the Commission's work will not only guide the United States' approach to human rights, but rather that it would have a global reach:

... and I will tell you, around the world, people are watching the work that our commission is undertaking. There is a thirst for this work, and I think this will be a document that is prepared—a commission chartered by the United States Department of State, but one that I think citizens all around the world will be able to hold up. When their human rights, when their fundamental rights are being challenged, they'll be able to hold up this document and point to this important work that's been done.<sup>59</sup>

And considering the laser focus that the administration has on eliminating women's sexual and reproductive rights, in particular abortion, this is likely to be a significant focus of the Commission's

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56. *Id.*

57. Pompeo, *supra* note 1.

58. Pompeo, *supra* note 2.

59. *Id.*

“work.” The composition of the Commission only lends further credence to this prediction. While the Charter provides provisions that seek to ensure membership balance, including that the “membership will be a bi-partisan, diverse group of men and women”<sup>60</sup> and represent “diverse points of view,”<sup>61</sup> an examination of the Commissioners and their work indicates otherwise. At present, the Commission is composed of nine men and three women,<sup>62</sup> only three people of color, and while the partisan affiliation of many members is unclear, there is only one confirmed Democrat on the Commission, Katrina Lantos Swett.<sup>63</sup> Additionally, most Commission members seem to share similar backgrounds and viewpoints, in particular on issues likely to be at the forefront of the Commission’s work—women’s rights and LGBTQI rights—and largely grounded in conservative theology.<sup>64</sup>

Mary Ann Glendon, appointed the Commission’s Chair by Secretary Pompeo, has a long history of anti-abortion advocacy, for which she has received a lifetime achievement award for “heroes of the pro-life movement.”<sup>65</sup> Glendon was also a co-founder of the organization “Women Affirming Life,” which was founded to counter the “relentless’ campaign to portray the pro-life movement as anti-women,”<sup>66</sup> and was the former U.S. Ambassador to the Holy See.<sup>67</sup> Glendon also led the Holy See’s delegation to the Fourth World Conference on Women in Beijing in 1995, where in the lead-up it was

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60. U.S. Dept. of State, Charter of the Department of State Commission on Unalienable Rights Addendum: Membership Balance Plan, art. 4(a), <https://www.justsecurity.org/wp-content/uploads/2019/06/charter-commission-unalienable-rights.pdf> [<https://perma.cc/TZ34-T4T2>].

61. *Id.* at 4(b).

62. Pompeo, *supra* note 55.

63. J.C. Derrick, *Her father’s daughter*, WORLD MAGAZINE (Apr. 11, 2017), [https://world.wng.org/2017/04/her\\_father\\_s\\_daughter](https://world.wng.org/2017/04/her_father_s_daughter) [<https://perma.cc/A4WH-5B7C>].

64. Jayne Huckerby, et. al, *Trump’s “Unalienable Rights” Commission Likely to Promote Anti-Rights Agenda*, JUST SECURITY (Jul. 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/> [<https://perma.cc/5S94-GUXF>].

65. Jennnifer Miller, *Glendon Receives Evangelium Vitae Medal at University of Notre Dame*, CATHOLIC NEWS SERVICE (May 1, 2018), <https://www.franciscanmedia.org/glendon-receives-evangelium-vitae-medal-at-university-of-notre-dame/> [<https://perma.cc/7FYR-ZNDC>].

66. Jacqueline Tetrault, *Founding members honored at Women Affirming Life breakfast*, THE BOSTON PILOT (Dec. 14, 2018), <https://thebostonpilot.com/article.asp?Source=Popular&ID=183935> [<https://perma.cc/C455-8Q2Q>].

67. Harvard Law School, *Faculty Profile: Mary Ann Glendon*, <https://hls.harvard.edu/faculty/directory/10311/Glendon> [<https://perma.cc/UL25-E5DL>].

noted that she had “on occasion taken positions that were more conservative than the Pope’s” on women’s rights, and where she questioned the Conference’s focus on family planning and reproductive rights as “getting rid of poverty by getting rid of poor people.”<sup>68</sup>

Glendon is not alone in her background in anti-choice and anti-women beliefs and writings. A cursory review of the twelve currently appointed Commission members reveals that eight have publicly made their anti-choice views clear. Commissioners Robert P. George (who is also credited with drafting the Commission Charter) and Christopher Tollefsen have co-authored a book entitled “Embryo: A Defense of Human Life.” In another collaborative piece, George and Tollefsen preview how they might approach key human rights concepts such as equality in the context of abortion: “The pro-life view is thus deeply motivated by the principle of the *fundamental equality in dignity of all human beings*, and certainly not by a desire to manipulate and control.”<sup>69</sup> George has argued that “the choice of abortion is objectively immoral”<sup>70</sup> and has stated that abortion rights are in opposition to equality and human rights.<sup>71</sup> Tollefsen is perhaps the Commission’s most prolific publisher on abortion. In addition to his joint work with George, Tollefsen has called abortion an “immoral act,”<sup>72</sup> compared state-sponsored embryonic research to “Nazi science,”<sup>73</sup> and asserted that he is “increasingly mindful of the way in which the presence of abortion in our world itself works to darken the natural light of reason. As the culture of death proceeds apace, the light of natural reason requires the light of Christ to see even what is obvious.”<sup>74</sup>

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68 . Barbara Crossette, *Vatican Picks U.S. Women As Delegate to U.N.Parley*, N.Y. TIMES (Aug. 25, 1995).

69 . Robert P. George & Christopher O. Tollefsen, *Embryos and Five-Year-Olds: Whom to Rescue*, PUBLIC DISCOURSE (Oct. 19, 2017), <https://www.thepublicdiscourse.com/2017/10/20332/> [<https://perma.cc/U9PA-W455>].

70 . Robert P. George & Patrick Lee, *The Wrong of Abortion*, CONTEMPORARY DEBATES IN APPLIED ETHICS (Andrew I. Cohen & Christopher Wellmans, eds., 2005).

71 . Robert P. George (@McCormickProf), Twitter (Mar. 10, 2018, 8:21 AM), <https://twitter.com/McCormickProf/status/972462475185704961> [<https://perma.cc/UW9Q-K9NG>].

72 . Jack Keefe, *Tollefsen Argues “A Philosophical Case Against Abortion,”* PHOENIX (Mar. 24, 2009), <https://swarthmorephoenix.com/2009/03/24/tollefsen-interview/> [<https://perma.cc/Y4GW-Z8SY>].

73 . Christopher Tollefsen, *Abortion and the Human Animal*, 10 CHRISTIAN BIOETHIC 105, 112 (2000).

74 . *Id.* at 114.

Jacqueline Rivers, who has cited George and Tollefsen's book as proof that life begins at conception,<sup>75</sup> is also the Executive Director of the Seymour Institute on Black and Policy Studies, an institute with the goal of creating and promoting "a philosophical and theological framework for a pro-poor, pro-life, pro-family movement within the ecumenical Black Church both domestically and internationally."<sup>76</sup> A key initiative of the Institute is devoted to defending "the right of the church to pursue the practice of biblical faith and promote in society the sanctity of human life and the correct understanding of marriage as a conjugal partnership of husband and wife."<sup>77</sup>

In a letter to Hillary Clinton, Rivers co-signed onto an argument that demonstrates how she views the right to abortion as situated in relation to natural law: "Biblical principle and natural law, both of which prohibit the taking of innocent human life, compel our concern about the increasing moral complicity with abortion."<sup>78</sup> Like Rivers (and many others on the Commission), Meir Soloveichik approaches abortion from a theological perspective. Soloveichik has stated in arguing against the Affordable Care Act's contraception mandate that "the taking of human life in utero, whether surgically or by abortifacient drugs, violates the basic human rights to life."<sup>79</sup>

Commissioner Paolo Carozza, for his part, has utilized natural law arguments grounded in Christianity to contrast the logic of the Supreme Court's finding in *Planned Parenthood of Southeastern Pennsylvania v. Casey* to conclude that "the former conceives of freedom as inseparable from an objective order of truth, justice, and charity; the latter contemplates freedom as pure

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75. Jacqueline Rivers, *DOXA: A Discussion on Justice: Race, Poverty, and Abortion*, Youtube, at 15:00 (Oct. 28, 2017), <https://www.youtube.com/watch?v=GQ1lnErBxqY> [<https://perma.cc/P525-F2C2>].

76. Seymour Inst. for Black Church and Policy Studies, *Jacqueline C. Rivers*, <https://www.seymourinstitute.com/jacqueline-rivers.html> [<https://perma.cc/7KXT-WQ9Q>].

77. *Id.*

78. Open Letter to Hillary Clinton Regarding Religious Freedom for Black America, SEYMOUR INST. FOR BLACK CHURCH AND POLICY STUDIES, <https://www.seymourinstitute.com/open-letter.html> [<http://perma.cc/E9JP-HYXT>].

79. Meir Soloveichik, et al., *United We Stand for Religious Freedom*, WALL ST. J. (Feb. 10, 2012), <https://www.wsj.com/articles/SB10001424052970204136404577211601075404714> [<http://perma.cc/5WCJ-EAC9>].

subjectivity untethered from human reason.”<sup>80</sup> He goes on to criticize the rights rationale of *Casey* as “the justification for the killing of innocent human life on a massive scale.”<sup>81</sup> Similarly, Hamza Yusuf Hanson has looked at Supreme Court jurisprudence on abortion and stated that “the Supreme Court has made its decision, but for many it is far from a settled matter.”<sup>82</sup> He further argues that “[s]cripture and science, taken together, can lead believers to rethink our understanding of when life begins, of the miracle of revelation, and most certainly of abortion.”<sup>83</sup>

F. Cartwright Weiland, who has been appointed as the Commission’s rapporteur, studied under Mary Ann Glendon at Harvard,<sup>84</sup> and has relied on the debunked “undercover” videos purporting to show Planned Parenthood’s financial interest in abortion<sup>85</sup> to argue that the Supreme Court should rule against Planned Parenthood in *Whole Women’s Health v. Hellerstedt*.<sup>86</sup> He has also touted his role in “the preparation of several amicus briefs filed on behalf of the state in *Whole Woman’s Health vs. Hellerstedt*.”<sup>87</sup>

Peter Berkowitz’s writings are more circumspect, but he has described efforts around contraception and same-sex marriage as a “progressive project to impose equality, redefined as sameness of conduct,” and criticized Justice Ruth Bader Ginsburg’s dissent in *Burwell v. Hobby Lobby* as part of a campaign to “to foster a single set of judgement about abortion and contraception and prescribe for all a

80. Paolo Carozza, *Rights and the Mystery of Man*, COMMUNION AND LIBERATION (Jan. 3, 2004), <https://english.clonline.org/news/culture/2004/01/03/rights-and-the-mystery-of-man> [<http://perma.cc/T372-VETM>].

81. *Id.*

82. Hamza Yusuf, *When Does a Human Fetus Become Human?*, RENOVATIO (Jun. 22, 2018), <https://renovatio.zaytuna.edu/article/when-does-a-human-fetus-become-human> [<http://perma.cc/J9FQ-WEZG>].

83. *Id.*

84. Council for Life, *Invitation: Spring Education Panel*, <https://councilforlife.org/springeducationpanel> [<http://perma.cc/GW3M-SMST>].

85. Dave Levitan, *Unspinning the Planned Parenthood Video*, FACTCHECK.ORG (Jul. 21, 2015), <https://www.factcheck.org/2015/07/unspinning-the-planned-parenthood-video/> [<http://perma.cc/6WJ8-Q67Z>].

86. John D. Colyandro and F. Cartwright Weiland, *Undercover footage undermines abortion advocates’ case in Texas abortion case*, THE DALLAS MORNING NEWS (Mar. 2, 2016), <https://www.dallasnews.com/opinion/commentary/2016/03/02/weiland-and-colyandro-undercover-footage-undermines-abortion-advocates-case-in-texas-abortion-case/> [<http://perma.cc/8D7F-QHAE>].

87. *Id.*

uniform code of reproductive morality.”<sup>88</sup> Berkowitz has also made clear that his approach to understanding human rights will be rooted in Christianity, which he thinks can help “curb the excesses that these days damage both progressivism and conservatism.”<sup>89</sup>

This only skims the surface of the views of the Commissioners as they relate to abortion. Unsurprisingly, many of the Commissioners have utilized these same, almost uniformly religiously grounded views to also argue against contraception and LGBTQI protections, including same-sex marriage. Indeed, the only divergences of views on the Commission appears to be whether women’s rights or LGBTQI rights pose the larger existential threat to America’s “founding principles of natural law and natural rights.” Understood in the context of the administration’s systematic attacks on abortion at the international level (detailed in Section II *supra*), the views of the Commissioners - in particular how they approach the intersection of “natural rights” and abortion - are instructive of where we can expect the Commission’s work to go.

#### IV. US LEADERSHIP & ABORTION

It is not only the Commission’s viewpoints and positions that are relevant to how its work is taken up and carried forward—but also those of key foreign policy figures, including the Secretary of State. This is made clear in the Commission’s Charter, which states that the Commission’s work will “guide U.S. diplomatic and foreign policy decisions and actions with respect to human rights in international settings.”<sup>90</sup>

Secretary Pompeo came to his position at the State Department after four terms as a Congressional representative for Kansas.<sup>91</sup> During his time in Congress, Pompeo sponsored and voted

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88. Peter Berkowitz, *The Long Rise of the Secular Faith*, MOSAIC (Aug. 24, 2015), <https://mosaicmagazine.com/response/politics-current-affairs/2015/08/the-long-rise-of-the-secular-faith/> [http://perma.cc/W2PS-D4SW].

89. Peter Berkowitz, *Rediscovering the Christian Foundations of Human Rights*, REAL CLEAR POLITICS (Apr. 20, 2019), [https://www.realclearpolitics.com/articles/2019/04/20/recovering\\_the\\_christian\\_foundations\\_of\\_human\\_rights\\_\\_140109.html](https://www.realclearpolitics.com/articles/2019/04/20/recovering_the_christian_foundations_of_human_rights__140109.html) [http://perma.cc/PGA5-A8V3].

90. Commission Charter, *supra* note 54.

91. *Biography: Michael R. Pompeo*, U.S. DEPT. OF STATE, <https://www.state.gov/biographies/michael-r-pompeo/> [http://perma.cc/U95Y-386L].

for an array of anti-abortion legislation,<sup>92</sup> earned a 0% rating from NARAL,<sup>93</sup> and supported strict abortion bans without exceptions for rape: “I believe that that child — however conceived — is a life and I want very much for that life to continue to exist.”<sup>94</sup> At the State Department, Pompeo has proudly overseen the implementation and expansion of the Global Gag Rule, and the unprecedented application of restrictions on abortion lobbying to a human rights expert body.<sup>95</sup> In addition, many of the actions outlined above in Section III on the erasure of language on sexual and reproductive rights in international documents have occurred under his leadership. Secretary Pompeo has also asserted his beliefs that the United States’ understanding of human rights should be grounded in religion: “The Trump administration is committed to protecting and promoting the God-given dignity and freedom of every human being. Every individual has rights that are inherent and inviolable. They are given by God, and not by government.”<sup>96</sup>

Recently confirmed Assistant Secretary of Democracy, Human Rights, and Labor, Robert Destro,<sup>97</sup> similarly brings with him a vehement anti-abortion background. Destro’s law review comment, written in 1975 shortly after *Roe v. Wade*, argued for the need for a constitutional amendment to protect life from the moment of conception,<sup>98</sup> and he served as counsel in early anti-abortion litigation, including religious objections to university fees going to

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92. *Mike Pompeo on Abortion*, ON THE ISSUES (Jul. 13, 2016), [https://www.ontheissues.org/House/Mike\\_Pompeo\\_Abortion.htm](https://www.ontheissues.org/House/Mike_Pompeo_Abortion.htm) [http://perma.cc/JT8E-MKKT].

93. *Mike Pompeo*, NARAL PRO-CHOICE AMERICA, <https://www.prochoiceamerica.org/representative/mike-pompeo/> [http://perma.cc/HTG5-9L6J] (last visited Nov. 5, 2011).

94. Roxana Hageman, *Pompeo: No rape exception in anti-abortion view*, TOPEKA CAPITAL-JOURNAL (Oct. 24, 2012), <https://www.cjonline.com/article/20121024/NEWS/310249902> [http://perma.cc/63H2-86P9].

95. Michael R. Pompeo, U.S. Sec’y of State, Remarks to the Press (Mar. 26, 2019), <https://translations.state.gov/2019/03/26/remarks-to-the-press-3/> [http://perma.cc/DP4U-D4Y7].

96. Michael R. Pompeo, U.S. Sec’y of State, and Nikki Haley, U.S. Ambassador to the U.N., *Remarks on the UN Human Rights Council* (Jun. 19, 2018), [https://usun.usmission.gov/remarks-on-the-un-human-rights-council/?\\_ga=2.68863127.722344136.1570215851-2110513283.1569945482](https://usun.usmission.gov/remarks-on-the-un-human-rights-council/?_ga=2.68863127.722344136.1570215851-2110513283.1569945482) [http://perma.cc/5RSK-SRHH].

97. *Nominations Confirmed (Civilian)*, U.S. SENATE, [https://www.senate.gov/legislative/nom\\_conf.htm](https://www.senate.gov/legislative/nom_conf.htm) [http://perma.cc/5Z7Y-XP9H].

98. Robert A. Destro, *Abortion and the Constitution: The Need for a Life-Protective Amendment*, 63 CAL. L. REV. 1250 (1970).

provide abortion counseling in their clinics.<sup>99</sup> Destro has also argued for utilizing the development of reproductive technology as a strategy to eradicate the need for abortion access: “Technology is pushing *Roe v. Wade* toward the ‘dustbin of history.’ It is time for pro-life advocates everywhere to get with the program—and *push!* If we do, we may find that we have more allies than we think.”<sup>100</sup>

In addition to leadership at the State Department, of relevance are the United States’ two primary diplomats to the United Nations: Andrew Bremberg, Ambassador to the U.N. in Geneva and Kelly Craft, Ambassador to the U.N. in New York. Bremberg’s confirmation hearings demonstrated exactly how he would execute his mandate, which entails leading U.S. engagement with the majority of the U.N.’s human rights bodies and other Geneva-based institutions, including the World Health Organization. During the hearing, when asked about his position on abortion for a woman who is raped in armed conflict, he replied, “I am pro-life, I believe that all human life is sacred and that human life begins at conception,”<sup>101</sup> and noted his role in developing and implementing the Trump Administration’s expanded Global Gag Rule.<sup>102</sup> Bremberg was narrowly confirmed largely along party lines.<sup>103</sup> Less is known about where newly appointed U.S. ambassador to the United Nations, Kelly Craft, stands on abortion. However, in her first speech at the U.N. on the issue, she made it clear she will toe the line with respect to the administration’s anti-abortion, anti-women’s rights approach. At the Security Council’s Open Debate on Women, Peace and Security, in a statement to explain the U.S.’s vote in favor of Resolution 2493, which called for “full” implementation of all previous resolutions on women, peace, and security, Craft noted:

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99. *Erzinger v. Regents of University of California*, Civ. 24408, (Cal. Ct. App. 4th 1982).

100. Robert A. Destro, *Is Roe v. Wade Obsolete?*, 24 HUMAN LIFE REVIEW 55, 68 (1998), <https://humanlifereview.com/wp-content/uploads/2015/11/1998summer.pdf> [<http://perma.cc/YJ49-FUUDS>] (emphasis in original).

101. Josh Aaron Seigel, *Democrat, Trump Nominee have fiery exchange over abortion rights for rape victims*, HILL (Jun. 20, 2019), <https://thehill.com/policy/healthcare/449584-democrat-trump-nominee-have-fiery-exchange-over-abortion-rights-for-rape> [<http://perma.cc/VN6S-MAAF>].

102. Ally Boguhn, *Senate Republicans Confirm Ambassador to U.N. Who Helped Craft Global ‘Gag Rule,’* REWIRE NEWS, Oct. 23, 2019, <https://rewire.news/article/2019/10/23/senate-republicans-confirm-ambassador-to-un-who-helped-craft-global-gag-rule/> [<http://perma.cc/9WHT-76X3>].

103. *Id.*

We cannot accept references to “sexual and reproductive health,” nor any references to “safe termination of pregnancy” or language that would promote abortion or suggest a right to abortion...The U.N. should not put itself in a position of promoting or suggesting a right to abortion, whether it is humanitarian or development work.<sup>104</sup>

Finally, President Trump and Vice President Pence remain key voices in U.S. foreign policy in general and on these issues in particular. Vice President Pence is perhaps the best known anti-abortion crusader in the administration and his commitment to the cause has been unwavering throughout his career.<sup>105</sup> President Trump has a more checkered background on abortion; however, since taking office, he has made anti-abortion policies a priority, including in his foreign policy agenda. This featured prominently in his recent speech to the U.N. General Assembly, where he previewed how the United States will approach the issue of abortion at the U.N. going forward:

Americans will also never tire of defending innocent life. We are aware that many United Nations projects have attempted to assert a global right to taxpayer-funded abortion on demand, right up until the moment of delivery. Global bureaucrats have absolutely no business attacking the sovereignty of nations that wish to protect innocent life. Like many nations here today, we in America believe that every child—born and unborn—is a sacred gift from God.<sup>106</sup>

This speech at the General Assembly came on the heels of the U.S. rallying and partnering with some unusual allies on women’s rights, including Saudi Arabia, Sudan, Yemen, Egypt, and Russia, to oppose language on sexual and reproductive rights in a declaration on

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104. Michelle Nichols, *U.S. pitted against Britain, France, South Africa, others at U.N. over abortion*, REUTERS (Oct. 29, 2019), <https://www.reuters.com/article/us-women-rights-usa-un/us-pitted-against-britain-france-south-africa-others-at-un-over-abortion-idUSKBN1X829K> [<http://perma.cc/ZW95-L8L8>].

105. Miriam Berg, *Eight Outrageous Facts About Mike Pence’s Record on Reproductive Rights*, PLANNED PARENTHOOD BLOG (Jul. 20, 2016), <https://www.plannedparenthoodaction.org/blog/8-outrageous-facts-about-mike-pencerecord-reproductive-rights> [<http://perma.cc/R4UT-YY88>].

106. Donald Trump, *U.S. President, Remarks to the 74th Session of the United Nations General Assembly*, (Sept. 24, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-74th-session-united-nations-general-assembly/> [<http://perma.cc/44F6-DX6A>].

universal health coverage.<sup>107</sup> By contrast, 58 nations, including many of the United States' more traditional allies, delivered a counter-statement calling for sexual and reproductive rights as a necessary part of universal health care.<sup>108</sup>

It is clear that U.S. foreign policy leadership is already committed to prioritizing efforts to undermine sexual and reproductive rights, in particular to abortion, and the Commission is yet another weapon in its arsenal. When it comes to abortion, the Commission-to-leadership pipeline will be an echo chamber within which the Commission will support the Trump administration in developing new arguments to complete its efforts to undermine women's rights.

### CONCLUSION

The State Department's Commission on Unalienable Rights represents the latest attack in a continued assault on human rights at home and abroad by the US government. The Trump administration's multifaceted and systematic attacks on the human right to abortion are instructive in how it may continue its onslaught against the content and implementation of the human rights framework as a whole.

Such an assault also has broader, more dangerous implications not only for the human rights system, but also for those it seeks to protect. The definition and scope of what constitutes a human right is not purely an academic matter, but rather one that has implications for the lived realities of individuals around the world. For example, US policies on abortion have had and continue to have dire, often lethal, consequences for women and girls in the United States and around the world. The World Health Organization has estimated that approximately 45%, or 25 million, of annual abortions are "unsafe," and unsafe abortion remains a leading cause of maternal mortality around the world.<sup>109</sup>

It is likely that the Commission will serve as a vehicle to erode a host of other rights recognized by the international system,

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107. Azar, *supra* note 18.

108. *Id.*

109. World Health Organization, *Worldwide, an estimated 25 million unsafe abortions occur each year* (Sept. 28, 2017), <https://www.who.int/news-room/detail/28-09-2017-worldwide-an-estimated-25-million-unsafe-abortions-occur-each-year> [<https://perma.cc/937W-MRRW>].

and in particular protections for marginalized populations, with the Administration's attacks on abortion as a template. This includes, for example, the Trump administration's efforts to eliminate discrimination protections for transgender people, as well as its relentless attacks on immigrants seeking refuge within American borders. In addition, as recent efforts at the U.N. have shown, this new American leadership will also provide encouragement and cover for other states to abandon and undermine the human rights framework.

The solution to this threat is not just a matter of dissolving the Commission; rather, the strategy must be much broader. As a starting point, the United States must take seriously and engage meaningfully with its own obligations in the human rights framework, becoming more of a pillar than a flying buttress. This is not merely an issue for conservative administrations, as even past liberal administrations have done little to embed human rights in the fabric of fundamental rights in this country. This includes such actions as the non-conditional ratification of all fundamental human rights treaties, including CEDAW, and their implementation. As this article has discussed, international treaties have strong abortion protections that could serve as a blueprint for strengthening domestic policies, including changes to US laws and policies that have been found to violate fundamental human rights, like criminal abortion laws and the repeal of abortion restrictions on foreign assistance including the Helms Amendment and the Global Gag Rule.

U.S. efforts since 1973 domestically and around the world to undermine abortion rights should be seen as a serious warning of things to come—the canary in the coal mine of the human rights system. U.S. attempts to erode abortion rights must be met with strong opposition, not only as a matter of women's rights, but as one that is necessary to protect the integrity of the human rights system. Until the United States treats human rights as a fundamental obligation, our rights, and those of people around the world, remain vulnerable.