



July 30, 2020

Commission on Unalienable Rights
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: Comment on the Draft Report of the Commission on Unalienable Rights

A. Introduction: Religious Freedom as a Fundamental Human Right

In every corner of the world, religious freedom is in peril. This is a multifaceted human rights tragedy, which assumes unique forms in different contexts, but always constitutes a violation of the fundamental right to seek and express a religious identity.

While all human rights are universal, indivisible, interdependent and interrelated, it is no contradiction to recognize that the freedom to hold religious or other beliefs is an essential precondition for the truly authentic (αὐθέντης) exercise of all human rights. Freedom of religion or belief, as recognized in the Report of the Commission on Unalienable Rights, is indispensable for the integral development of the human person and the flourishing of society as a whole.

Almost 40 years have elapsed since Pope John Paul II addressed the General Assembly of the United Nations on the need to safeguard the totality of rights for every person without discrimination in order to achieve global peace.¹ As he explained, to protect religious freedom is to safeguard peace, and the Report of the Commission has reaffirmed the United States' commitment to doing just that.

As a fundamental right, freedom of religion is central to the protection of other unalienable rights, including freedom of speech and assembly.² Elevating freedom of religion enhances all other freedoms. It can be said that a hierarchy of rights does exist, separating the fundamental from the secondary, in that without due respect for the fundamental, it is impossible for all other rights to flourish. Enhanced attention to religious freedom, so imperilled at this time, is not only an end in and of itself, but also a crucial prerequisite for human rights in general.

ADF International is a human rights organization present at the world's major international institutions. As such, we have a unique perspective as to how the international human rights

¹ Address of His Holiness John Paul II to the 34th General Assembly of the United Nations, available at: http://www.vatican.va/content/john-paul-ii/en/speeches/1979/october/documents/hf_jp-ii_spe_19791002_general-assembly-onu.html

² Opening Remarks by Secretary Pompeo, 2019 Ministerial to Advance Religious Freedom (16 July 2019), available at: <https://www.state.gov/2019-ministerial-to-advance-religious-freedom/>

project has regressed. This is due to a specious polarization of the human rights discourse, a surge in neo-colonial ideological agendas, and the proliferation of false rights—all of which undermine fundamental, universally recognized human rights. For these reasons, we welcome the outline approached by the Commission as the way forward for the revitalization of the human rights project.

B. A System in Crisis

The Commission is correct to state that the international human rights project is in crisis. The promise of the Universal Declaration of Human Rights (UDHR) has been severely jeopardized as the Commission accurately points out that, “human rights are now misunderstood by many, manipulated by some, rejected by the world’s worst violators, and subject to ominous new threats.”³ There is no shortage of examples of this trend. The United Nations, whose Charter affirms “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,”⁴ often itself perpetrates a narrative of false rights in violation of the very same human rights and State sovereignty it is mandated to protect.

In spite of the UN’s missteps, the Commission is correct to emphasize that its framework is sound. There exists a strong foundation within the UN system to protect human rights, including religious freedom. For instance, the UDHR, the UN Charter, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief all reflect the political will and commitment of States to accord utmost protection to religious freedom. Sadly, the UN and its mechanisms all too often have failed to carry out the vital obligation to protect this fundamental human right.

The great strength of the Commission’s analysis lies in its enthusiasm for reviving the international human rights project, rightly entwined with due acknowledgement of US scepticism of the current international order. The Commission Report demonstrates that it is possible to reconcile historical US reticence with a passionate insistence on American multilateral obligations in the name of human rights, derived from its privileged domestic democracy. This is a highly nuanced “third way” of understanding constructive American international engagement, which transcends the tired liberal/conservative divide.

³ Draft Report of the Commission on Unalienable Rights (July 2020), available at: <https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf>.

⁴ Preamble to the Charter of the United Nations, available at: <https://www.un.org/en/sections/un-charter/preamble/index.html>.

C. Examples of UN Failures

Citing problems with the international institutions, overt violations of human rights at the hands of governments, and divisive tension over what even constitutes a human right, the Report makes clear that many failures have tarnished the promises of the international human rights project, first put in motion after World War II. The UN system in particular is rife with examples of not only the failure to protect human rights and fundamental freedoms, but also the championing of false rights in their stead. For example, the UN Human Rights Council (HRC) was created in order to “promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”⁵ And yet, it continuously blocks real human rights momentum, allowing political and ideological agendas to compromise its work.⁶

In addition to failures to address religious freedom and other gross human rights violations, the UN also systematically has contravened the right to conscientious objection—enshrined in international law.⁷ The treaty bodies charged with monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁸ and the Convention on the Rights of the Child (CRC)⁹ have issued general comments urging countries to organize their health systems to prevent the exercise of conscientious objection to abortion. These are dangerous occurrences that evince an increasing and disturbing disregard for fundamental human rights.

The UN system has exerted its influence to push agendas that find no basis in international law or enjoy consensus among the Membership. Most prominent among these is the promotion of abortion. In 2014, the Committee on the Rights of the Child expressed an egregious disdain for religious freedom as it rebuked the Holy See in its concluding observations. The gross overstepping included calls to repeal and amend Canon Law in order to change Catholic Church teachings and practices on abortion and contraception.¹⁰ The Holy See asserted the right of faith communities to freely express their doctrine as they see fit. This is reflective of a system-wide insistence on “rights” that are either found nowhere in international law or

⁵ GA. Res. 60/251, U.N. Doc. A/RES/251 (3 Apr 2006).

⁶ Elyssa Koren, UN Human Rights Council Exploits COVID-19 Pandemic to Support Funding for Abortion, <https://www.dailysignal.com/2020/07/24/un-human-rights-council-exploits-covid-19-pandemic-to-support-funding-for-abortion/>.

⁷ International Covenant on Civil and Political Rights (ICCPR) art. 18 (Mar. 1976).

⁸ CEDAW, *General Recommendation No. 24: (1999) Article 12 of the Convention* (‘States parties should further organize health services so that the exercise of conscientious objection does not impede their effective access to reproductive health care services, including abortion and post-abortion care’).

⁹ CRC, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* (‘States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers’ conscientious objections.’).

¹⁰ Comm. On the Rights of the Child (CRC), *Concluding Observations on the second periodic report of the Holy See*, 14 UN Doc. CRC/C/VAT/CO/2 (Feb. 2014).

inferred from spurious interpretations of existing human rights treaties. Such a view permeates nearly all UN processes, in direct violation of State sovereignty and the religious, ethical, and cultural values of individuals.

As a further example of false right promotion, this past June, the UN Commission on Population and Development (CPD) met virtually to negotiate a text on nutrition, with an emphasis on COVID-19.¹¹ A positive outcome would have signaled the political will of UN Member States to support States that desperately need assistance amidst a fracturing food system due to the pandemic. The text was withdrawn due to lack of consensus over abortion promotion, instead of agreeing to drop abortion references in the interest of producing a consensual text. The failure to adopt an outcome unfortunately has become the norm for this particular commission—evidence that abortion promotion often takes precedence over authentic concern for development.

UN development efforts, as guided inter alia by the International Conference on Population and Development and the UN Population Fund (UNFPA), are bound to reduce recourse to abortion. The current state of affairs thus constitutes a severe, and tragic, breach of its mandate. Under the guise of “women’s empowerment,” UNFPA continually encroaches on Member State processes, such as the CPD, in order to promote “reproductive rights”—a euphemism for the abortion agenda. Evidence of the Agency’s historical and continued practice of coercing States into accepting abortion promotion is a severe violation of State sovereignty, and vindicates the US withdrawal of funding. The reality is that many States continue to prohibit or heavily restrict abortion as a matter of national law. As a result, there is no consensus on abortion promotion, in addition to no grounding in international law—a fact that should render the UN mute on this issue.

The erosion of parental rights at the hands of the UN is further evidence of a broken system that fails to hold true to the founding principles of the international human rights project. Building on the provisions of the International Covenant on Economic, Social and Cultural Rights, the CRC cements parental rights in international law by asserting that, “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom.”¹² This foundational statement is currently under assault by UN agencies. For example, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) advances “comprehensive sexuality education” (CSE), radical sexuality information, often for very young children. The promotion of CSE curricula stands in violation of international law as it removes parents from rudimentary decision-making on matters related to how children are educated on sensitive topics. The practice of UN agencies asserting CSE as a human right is particularly dangerous as it gives false license to shame Member States for refusing to comply with perceived international obligations.

¹¹ Elyssa Koren, *The United Nations Holds up COVID-19 Relief Over Abortion*, <https://www.nationalreview.com/2020/07/united-nations-commission-holds-up-coronavirus-aid-over-abortion/>.

¹² Convention on the Rights of the Child, E/CN.4/RES/1990/74 (Mar. 1990).

D. Revitalizing the International Human Rights Project: The Back to Basics Approach

Despite the clear and innumerable failings of the international human rights project, the message of the Commission is ultimately one of optimism. All is not lost, and we can, and must, revive the project for its intended purpose. The Report offers an inspiring and pragmatic means to achieve this, making use of the fruits of American constitutional democracy. The Commission provides newfound hope that the answers reside in the US' multi-centennial tradition as a mature democracy that has weathered many storms.

The solution to the shortcomings of the international human rights project is a back to basics approach in which genuine consensus is the guidepost for human rights determinations. Building on the foundations established by the UDHR, we must return to the mindset of the drafters of the project, immediately following World War II, in which they understood the crucial importance of sticking to the basics of agreement in the interest of global peace. Respect for consensus and State sovereignty are thus the keys to unlocking the promise of human rights going forward. Without this, political preferences will continue to be heralded as “human rights,” at the expense of the principle of universality.

Like today, there were stark disagreements over what fundamental human rights consisted of in 1948, which could easily have doomed the project should the drafters not have had the wisdom to overcome. They focused on a minimum, yet comprehensive, common denominator upon which all states could agree, allowing for a framework of international human rights to emerge based on common respect for human dignity. Such respect for differing, yet legitimate, country positions must be reclaimed. Moreover, it is imperative that we recall that every matter need not be addressed in international fora. In accordance with the principle of subsidiarity, national legislatures and courts are in fact better equipped to deal with issues where consensus is not possible on a global scale.

In addition to the drafters' modesty concerning what it is that actually constitutes a fundamental human right, they also appreciated the need to allow States flexibility in the implementation of these rights. State sovereignty is protected when the principle of flexible pluralism guides the international human rights discourse. The governments who signed onto the core international human rights treaties had the reassurance that they were committing to overarching standards, and not one-size-fits-all methodologies. The Vienna Declaration reaffirms this by stating that, “the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind.”¹³ This is to say that without trampling on universally recognised human rights, States shall implement their obligations in a way that is mindful of their national contexts.

¹³ Vienna Declaration and Programme of Action, Art I(5), <https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>

Commissioner Glendon often has recalled how the UDHR came into being as a result of a commitment to the basics upon which all could agree. In order to revive the international human rights project, she suggests the way forward is “the systematic elimination of a narrow set of evils for which a broad consensus exists across all societies.”¹⁴ This would not be unlike what occurred over 70 years ago when the UDHR was adopted. The Commission is right to encourage the US, and all States, to recommit to this vision if we are to save the international human rights project.

E. Conclusion: The Way Forward

The Commission sets forth a concrete vision for the US, where the pursuit of human rights goals in international fora coincides with promoting its national priorities. It is apparent from the Report that strategic engagement, not disengagement, is key to fulfilling that vision. As Secretary Pompeo has said, we can “ground America’s commitment to championing human rights in our enduring dedication to unalienable rights and our tradition of constitutional self-government.”¹⁵

The role of the US in resuscitating the international order is to be defined by the history of human rights protection in American democracy. We look forward to further elaboration by the Commission as to the practical steps that this will entail, and appreciate the groundwork the Report has laid for the way forward understood as the following:

1. US leadership is crucial for the promotion and protection of freedom of religion or belief—a fundamental human right that the US, by virtue of its founding principles, is uniquely situated to protect. Upholding this right will contribute to the flourishing of human rights at large.
2. The future of human rights demands that the US remain a major player on the international stage. US influence must be leveraged for the pursuit of human rights everywhere, as informed by American democratic heritage. At the same time, respect for sovereignty is paramount, and ample room should be accorded to States as to how human rights obligations are implemented in accordance with their national contexts.
3. Caution should be exercised with regard to the proliferation of “new” rights, which are often driven by rogue actors “determined to bypass ordinary politics and domestic

¹⁴ Mary Ann Glendon, *Renewing Human Rights* (February 2019), <https://www.firstthings.com/article/2019/02/renewing-human-rights>

¹⁵ Michael R. Pompeo, American diplomacy must again ground itself in the nation’s founding principles, <https://www.washingtonpost.com/opinions/2020/07/16/pompeo-oped-commission-unalienable-rights/>.

democratic processes...to advance agendas that are not widely shared in the community of nations.”

4. The US is wise to maintain “a position of selective constructive engagement” with institutions such as the UN. The US also has a responsibility to hold the international institutions accountable to their mandates and prevent unwarranted incursions on sovereignty.

Despite the profound optimism of the Report, it is evident that the way forward will be arduous—but fundamental human rights must be defended unapologetically. ADF International remains committed to the promise of the international human rights project, and expresses sincere appreciation for the work of the Committee in this regard.

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