



**Submission to the U.S. State Department Commission on the Unalienable Rights:
Comment on the Commission’s Draft Report
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Endorsing Organizations:

- The Center for Rural Enterprise and Environmental Justice
- The Leadership Conference Education Fund
- Northeastern Law School Program on Human Rights and the Global Economy
- The US Human Rights Network

We join fully with human rights, civil liberties, social justice, and faith-based organizations and leaders that “object strenuously to the report that has emerged from th[e] fundamentally flawed and unnecessary undertaking” of establishing a Commission on Unalienable Rights to redefine international human rights principles; emphasize the importance of U.S. leadership on human rights at home and abroad; question the origins and purpose of the Commission; and call for U.S. policy grounded in international human rights standards as articulated in existing human rights treaties and declarations. Accordingly, we reject the following elements of the Commission’s report and the premises on which they purport to rely, which are detailed in a joint statement that endorsers of this submission have also signed:¹

- The assertion—fundamental to the Commission’s mandate—that a proliferation of rights claims has undermined the legitimacy and credibility of the human rights framework;
- The idea that there is an untenable uncertainty regarding the meaning and scope of the human rights framework that necessitates sidelining binding treaties;

¹ See Letter to Commission Chairperson Mary Ann Glendon from 230 human rights organizations, faith-based groups, law school clinics, activists, academics, former senior U.S. government officials, and other concerned parties (July 30, 2020), <https://www.humanrightsfirst.org/sites/default/files/CUR%20Report%20Comment%20NGO%20Letter%20Final%2020.07.30.pdf>.

- The manner in which the report promotes rights hierarchies through its emphasis on a certain subset of civil and political rights;
- The Commission’s dismissal of certain human rights as “divisive social and political controversies”;
- The report’s characterization of so-called new rights and the criteria contrived by the Commission for recognizing them.

This brief submission underscores that while the Commission’s report includes some fleeting references to the ongoing challenges that face the United States in efforts to address racial injustice and discrimination, the report presents a false picture of a U.S. legal framework shaped to advance equality. We also emphasize that at its core, the Commission report undermines the human rights standards that are necessary to create conditions where everyone can enjoy basic rights on an equitable basis regardless of identity.

The Commission’s report presents an incomplete accounting of the history of rights protections in the United States and offers a fragmented reading of international human rights principles. The circumscribed vision of rights presented in the report is a vision that will perpetuate longstanding inequality and leave many behind.

Well established international human rights norms, including treaty law, require government action to change attitudes, policies, laws and structures that reflect and perpetuate bias and discrimination. Internationally recognized human rights standards further underscore that economic and social protections are fundamental. When law and policy fail to guarantee these protections, true equality remains elusive and the realization of human rights remains out of reach for all but a few.

The Report Ignores Significant & Persistent Challenges to Equality in the U.S.

The Commission’s draft report describes domestic laws enacted to address discrimination in terms so rosy as to be misleading, while promoting the United States as a model to other governments. As one example, the discussion of the passage of the Civil Rights and Voting Rights Act fails to acknowledge the significant barriers to passing and enforcing these protections, historically and at present.

The report also repeatedly references the importance of “individual freedom and human equality.” Ignoring the vast and growing wealth gap in the country, as well as disparities across a wide range of social and economic indicators, the report uncritically asserts the United States is on a trajectory of forward progress:

It must be acknowledged that under the banner of states’ rights, states exploited federalism to shield slavery and prolong discrimination. Nevertheless, over the

long run the constitutional dispersion of power between the U.S. government and the governments of the states has permitted, to a remarkable degree, individuals and communities throughout the land to pursue happiness as they understand it. (p.15)

There is some acknowledgment in the Commission’s report that “much must still be accomplished” but the main thrust is that “America’s distinctive rights tradition” is sufficient to achieve equality. Yet the reality is that dignity, opportunity, and equality have long been denied to Black Americans, Native Americans, and many others, as a result of laws and institutions that reflect discriminatory attitudes and ideas, and are tainted by systemic racism and bias.

The failure of the report to acknowledge the limits of past *and* current U.S. law in advancing equality is a glaring omission. The United States Constitution, and most federal laws that codify anti-discrimination protections in some areas of life and work, require a high burden of proof to prove discrimination. Yet, even the limited discrimination protections that do exist are currently being dismantled. Under the current Administration, federal agencies have sought to rollback disparate impact protections, particularly in the context of housing. Very few laws aim to achieve equality in fact.

The Report Incorrectly Conflates Non-Discrimination and Equality

The Commission report further attempts to conflate non-discrimination and equality. Yet well-established human rights norms include both – the **right to be free from discrimination** in all its forms, and **measures that foster equality**.² The U.S. has ratified two of the international human rights treaties that aim to ensure equal enjoyment of rights regardless of identity – the International Covenant on Civil and Political Rights (ICCPR), and the International Convention of the Elimination of all Forms of Racial Discrimination (ICERD). Policies and practices that evince a clear discriminatory intent, as well as those with a disproportionately negative impact on a group based on identity, contravene both ICERD and the ICCPR. Indeed, human rights laws require governments to identify and address discrimination in all its forms. This includes eliminating policies that have a disparate impact or those which unintentionally perpetuate discrimination. In order to foster equality, the international human rights framework calls for government policies calibrated to promote equal outcomes for all, regardless of economic, racial,

² See The Center for Rural Enterprise and Environmental Justice, the Columbia Law School Human Rights Institute, and the Leadership Conference Education Fund, *Submission to the US State Department Commission on Unalienable Rights* (Apr. 10, 2020), https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/unalienable_rights_commission_submission.hri_and_creej_and_lcef_4.pdf (offering a more in-depth discussion of how failing to guarantee economic and social protections entrenches inequality and leads to wide ranging disparities, and emphasizing the link between struggles for racial justice and economic and social rights in the United States).

or gender status; national or ethnic origins; gender identity; sexual orientation; age; disability; or other status.

The Report Ignores that Economic and Social Rights are Vital to True Equality

ICERD specifically calls on governments to guarantee equality in the enjoyment of basic services, including unemployment protection, housing, medical care, social security, and social services. This builds on the foundational principles articulated in the Universal Declaration of Human Rights – a foundation that the Commission’s Report purports to embrace. Indeed, under a human rights framework, governments must take steps to promote and protect economic and social rights, such as adequate housing, progressively over time and in light of available resources, and avoid rollbacks in services.

The legal basis for economic and social rights has long been contentious in the United States. Globally, this has manifested in a failure to ratify the foundational treaty that protects these rights, the ICESCR, and ambivalence towards efforts to define governmental obligations to promote and protect these rights, despite the reality that they are deeply entwined with efforts to address discrimination. Domestically, the failure to recognize economic and social rights as standalone rights, with corollary obligations, impacts millions of people daily – particularly those who do not make a liveable wage, those who lack access to housing and shelter, and those who do not qualify for the limited statutory social benefits that do exist.

The Government’s often inhumane positions and practices regarding economic social rights do not negate the fact that healthcare, housing, food, water, and sanitation are essential for individuals and communities to thrive, and constitute human rights. Likewise, the Commission’s report cannot unilaterally eviscerate internationally agreed upon norms and standards. However, the draft report should nevertheless be rejected. The report contains erroneous statements of domestic and international law, omits essential facts, and presents views that justify actions counter to the letter and spirit of bedrock international human rights principles, and which undermine racial justice and true equality for all.