

**Submission to the US State Department Commission on the Unalienable Rights
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This submission emphasizes the centrality of economic and social rights to human rights and highlights how advocating for a hierarchy of rights that downplays their equal status is contrary to widely-recognized international norms, ignores the lived experience of individuals, and will serve to further entrench inequality.¹ The submission urges the Commission to recognize and reaffirm the full panoply of human rights found in the Universal Declaration of Human Rights (UDHR) and subsequent human rights agreements. The discussion highlights the negative implications of a narrowed conceptualization of human rights,² emphasizing that a circumscribed vision of human rights will perpetuate a system where true freedom is enjoyed only by a privileged few – those who can afford it.

The pandemic that is sweeping the globe right now makes clear that ensuring fundamental economic and social rights, including water and sanitation, is essential to facilitate basic health and to prevent transmission of COVID-19.³ The pandemic has also exposed the reality that in many countries around the world these basic rights have long been denied to particular communities, entrenching inequality and putting the lives of already vulnerable populations at

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¹ This submission is excerpted and adapted from JoAnn Kamuf Ward and Catherine Coleman Flowers, *How the Trump Administration's Efforts to Redefine Human Rights Threaten Economic, Social, and Racial Justice*, 4 Colum. H. Rts. L. Rev. 27 (2019), <http://hrlr.law.columbia.edu/hrlr-online/how-the-trump-administrations-efforts-to-redefine-human-rights-threaten-economic-social-and-racial-justice/>.

² See *id.*, Part III.A; see also Jayne Huckerby, Sarah Knuckey, and Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote an Anti-Rights Agenda*, Just Security, July 9, 2019, <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/>.

³ See, e.g., Human Rights Watch, *Human Rights Dimensions of COVID-19 Response* (Mar. 19, 2020), <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#> (“Lack of potable water and sanitation at home, school, or in healthcare settings will make preventative measures difficult. In some cases, without adequate water and sanitation these settings themselves may be a locus for the spread of the disease.”)

risk.⁴ This is true in the United States,⁵ where the lack of access to adequate and affordable water and sanitation disproportionately impacts Black, Latinx, and Indigenous communities.⁶ Existing disparities, which undercut equality and perpetuate discrimination, cannot be addressed in the absence of laws and policies that recognize and protect economic and social rights.

Internationally recognized human rights standards underscore that economic and social protections, including for adequate and affordable water and sanitation, are essential to an adequate standard of living.⁷ When law and policy fail to guarantee these protections, equality remains elusive and human rights are out of reach.

The Unalienable Rights Commission should respect, rather than undermine, the universal, interconnected, and interdependent nature of human rights. While the Commission is an advisory body, its positions and recommendations are likely to inform United States foreign policy and shape the domestic human rights landscape as well. U.S. articulations of human rights can also influence interpretations of human rights law, contribute to other government's positions on (and implementation of) human rights, and impact the work of multilateral bodies.

This submission proceeds in three parts. Part I distills the aims of the Commission as articulated by US government representatives and a range of stakeholders, and highlights some of the early concerns about its potential to undermine human rights norms, and economic and social rights in particular. Part II emphasizes the fundamental interrelationship between economic and social rights and true freedom. Part II.A illustrates how domestic human rights struggles for equality and racial justice underscore this inextricable link. Part II.B discusses the normative fabric of human rights, which has connected economic and social

⁴ See, e.g., Sheikh Saaliq, TIME, Limited Access to Clean Water Among India's Poor Spawns Coronavirus Concerns (Mar. 18, 2020), <https://time.com/5805534/india-clean-water-hygiene-coronavirus/> (Approximately “160 million — more than the population of Russia — of India’s 1.3 billion people don’t have access to clean water. That could leave impoverished Indians ... at risk during the virus outbreak.”).

⁵ See e.g., Alexander Kaufman, *What It’s Like To Not Have Running Water During A Pandemic*, HUFFPOST (Mar. 26 2020), https://www.huffpost.com/entry/water-coronavirus_n_5e7bede4c5b6256a7a243b73 (“the pandemic may raise awareness of social inequities across the country, but that it will do little to increase water access on reservations, a long-standing problem that stems back to lack of funding and conflicts over state and tribal jurisdictions.”).

⁶ ACRE ET AL., FLUSHED AND FORGOTTEN: SANITATION AND WASTEWATER IN RURAL COMMUNITIES IN THE UNITED STATES (May 2019), https://www.law.columbia.edu/system/files/private_file/flushed_and_forgotten.final_report_0.pdf; US Water Alliance & Dig Deep, CLOSING THE WATER ACCESS GAP IN THE UNITED STATES: A NATIONAL FRAMEWORK (2019), http://uswateralliance.org/sites/uswateralliance.org/files/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf.

⁷ See e.g., Human Rights Watch, *supra* n. 3 (“The UN Committee on Economic, Social and Cultural Rights has reaffirmed that the rights to water and sanitation are an essential component of the right to an adequate standard of living, and “integrally related, among other Covenant rights, to the right to health.”); UN GA Res. 70/169, The Human Rights to Safe Drinking Water and Sanitation, ¶ 2 (Dec. 17, 2015). UN resolutions on the human rights to water and sanitation indicate that these rights are derived from the right to an adequate standard of living as articulated in the Universal Declaration of Human Rights (UDHR) and guaranteed in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

rights and equality since its inception. The submission concludes with some of the ways that the Commission's findings may flout foundational international human rights norms.

I. Undermining Human Rights: Aims and Establishment of the Commission

In July 2019, U.S. Secretary of State Pompeo announced the establishment of the Commission on Unalienable Rights.⁸ The stated purpose: “To provide . . . fresh thinking and propose . . . reforms of human rights discourse,”⁹ which will inform U.S. decisions related to foreign policy. The announcement sparked outcry from domestic social justice advocates, faith leaders, international human rights organizations, and former government officials.¹⁰

Opposition to the Commission has emphasized the opaque process that led to its creation, the narrow ideological orientation of Commissioners, and its redundancy.¹¹ Significant criticism has also been levied against the Commission on substantive grounds.

The overarching concern is that the Commission will provide official cover for the United States' efforts to narrow human rights protections. Since the rollout of the Commission, Secretary Pompeo has openly indicated that the intent is to narrow rights and reset the policy priorities of the United States to guide government actors and work in international fora.¹² Pompeo's statements point to a predetermined agenda that includes a redefinition of the

⁸ See *Remarks, Michael Pompeo, U.S. Secretary of State* (Jul. 8, 2019), <https://www.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press-3/>

⁹ *Charter, Department of State Commission on Unalienable Rights* (2019), <https://www.justsecurity.org/wp-content/uploads/2019/06/charter-commission-unalienable-rights.pdf>.

¹⁰ See e.g., *Letter from U.S. foreign policy, human rights, civil liberties, social justice, and faith leaders, experts, scholars, and organizations to Secretary of State Michael Pompeo*, HUMAN RIGHTS FIRST (Jul. 22, 2019), <https://www.humanrightsfirst.org/resource/coalition-letter-secretary-state-mike-pompeo-commission-unalienable-rights> (summarizing highlights from collection of letters to Secretary Pompeo expressing disapproval at the creation of the Commission). See also Michael Posner, *Why A New Commission Could Undercut the US' Human Rights Efforts*, FORBES (June 11, 2019), <https://www.forbes.com/sites/michaelposner/2019/06/11/why-a-new-commission-could-hurt-undercut-the-state-departments-human-rights-efforts/#707c0eab337f> (explaining how the Commission could potentially harm other ongoing State Department human rights programs); Conor Finnegan, *State Dept. Panel to Redefine Human Rights Based on 'Natural Law and Natural Rights'*, ABC NEWS (May 31, 2019), <https://abcnews.go.com/Politics/state-dept-panel-redefine-human-rights-based-natural/story?id=63400485> (explaining the Commission's basic charter); Nahal Toosi, *State Department to Launch New Human Rights Panel Stressing 'Natural Law'*, POLITICO (May 30, 2019), <https://www.politico.com/story/2019/05/30/human-rights-state-department-1348014> (highlighting the Commission's focus on concepts of natural law).

¹¹ See Toosi, *supra* Note 10; Posner, *supra* Note 10; see also *Letter from United States Senators to Secretary of State Mike Pompeo* (June 12, 2019), <https://www.foreign.senate.gov/imo/media/doc/06-12-19%20Unalienable%20rights%20commission%20letter%20signed.pdf> (expressing concern about the potential human rights implications of the Commission's work). The U.S. State Department already has a bureau that “addresses the fundamental freedoms set forth in the founding documents of the United States and the complementary articles of the Universal Declaration of Human Rights and other global and regional commitments.” See Bureau of Democracy, Human Rights, and Labor, *About Us* (Aug. 1, 2019), <https://www.state.gov/about-us-bureau-of-democracy-human-rights-and-labor/>; see also *Letter from United States Senators, supra* Note 10 (highlighting that “it is hard to envision what work the Department's proposed Commission would conduct that DRL could not carry out”).

¹² U.S. Secretary of State Michael R. Pompeo, *Remarks, Secretary Michael R. Pompeo At the Concerned Women for America 40th Anniversary Luncheon* (Sept. 13, 2019), <https://www.state.gov/secretary-michael-r-pompeo-at-the-concerned-women-for-america-40th-anniversary-luncheon/>.

baseline of human rights, focused on a limited set of rights such as freedom from torture, and genocide, and discrimination, and an agenda that centers religious freedom.¹³ Religious freedom is repeatedly named by Pompeo as “the most important freedom,”¹⁴ a “fundamental” right that has not received sufficient attention.¹⁵ Elevating religious freedom comes in tandem with an effort to deprioritize economic and social rights protections.

From the outset, senior administration officials have echoed that the Commission will examine the “difference between ‘unalienable’ and other kinds of rights.” For example, whether a right to liberty, on the one hand, is on the same level as the rights to water or other economic and social rights on the other.¹⁶ Secretary Pompeo expressed his own disdain for economic and social rights when announcing the Commission, referring to them as “ad hoc” rights.¹⁷ The Commission launch itself perpetuated inaccurate portrayals of economic and social protections.¹⁸ Even more significant is the motivating – and erroneous – belief that economic and social rights can be downgraded because if the government simply leaves individuals alone, societies will thrive.¹⁹ Under this view, society is at its best when

¹³ Masha Gessen, *Mike Pompeo’s Faith-Based Attempt to Narrowly Redefine Human Rights*, *NEW YORKER* (Jul 10, 2019),

<https://www.newyorker.com/news/our-columnists/mike-pompeos-faith-based-attempt-to-narrowly-redefine-human-rights>.

¹⁴ See U.S. Secretary of State Michael R. Pompeo, Remarks, Secretary Michael R. Pompeo At the Concerned Women for America 40th Anniversary Luncheon (Sept. 13, 2019), <https://www.state.gov/secretary-michael-r-pompeo-at-the-concerned-women-for-america-40th-anniversary-luncheon/>.

¹⁵ *Id.* See also U.S. Secretary of State Michael R. Pompeo, *Interview with Washington Watch* (Jul. 15, 2019), at <https://www.state.gov/interview-with-tony-perkins-of-washington-watch/> (discussing the State Department’s Ministerial to Advance Religious Freedom and the role of the Commission in advancing religious freedom and defining basic rights).

¹⁶ See Matt Hadro, *New Commission Will Give ‘Critical Attention’ to Human Rights, Experts Say*, *NAT’L CATHOLIC REGISTER* (Jul. 12, 2019), <http://www.ncregister.com/daily-news/new-commission-will-give-critical-attention-to-human-rights-experts-say> (referencing a “right to welfare payments”).

¹⁷ Secretary of State Michael R. Pompeo, *Unalienable Rights and U.S. Foreign Policy*, *WALL STREET JOURNAL* (Jul. 7, 2019), <https://www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448>

¹⁸ For example, the UDHR recognizes a “right to social security” (Art. 22) and “social protection” (Art 23) and article 25 details that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Critics of economic and social rights often mischaracterize rights protections in an effort to undercut their validity. See e.g., Roger Pilon, *Will the State Department’s new Commission on Unalienable Rights get it right?*, *THE HILL* (Jul. 11, 2019), <https://thehill.com/opinion/civil-rights/452493-will-the-state-departments-new-commission-on-unalienable-rights-get-it> (mischaracterizing the UDHR’s provisions as including a right “to jobs”, when in fact, the UDHR, in article 23 states that “(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”).

¹⁹ See, e.g., HERITAGE FOUNDATION, *2020 INDEX OF ECONOMIC FREEDOM 2* (2019) (“state action or government control that interferes with individual autonomy limits economic freedom. ... Some government action is necessary for the citizens of a nation to defend themselves and promote the evolution of civil society, but when government action rises above the minimal necessary level, it is likely infringing on someone’s economic or personal freedom”) (proffering support for limited government intervention and market-oriented systems as a pathway toward individual liberty and improved quality of life). The Heritage Foundation, which has praised the Commission, is an organization long skeptical of UN norms and institutions. The Heritage Foundation has rallied against

government takes a hands-off approach. The corollary is that laws and policies that proactively aim to achieve greater equality and ensure economic and social rights are inappropriate.²⁰

As detailed elsewhere, there are strong indications that the Commission's conclusions may perpetuate inaccurate portrayals of human rights and support selective U.S. interventions on ideological grounds.²¹

The Trump Administration has already undercut global human rights norms, including through withdrawal from global institutions.²² In the international arena, the Administration has stymied efforts to improve health by seeking to remove the terms “sexual and reproductive health and rights” from UN resolutions,²³ and by cutting funding critical to women's health through the “Global Gag Rule.”²⁴ The United States has also announced withdrawal from the Paris Agreement, risking further exacerbation of environmental and

efforts to address systemic discrimination or proactively promote equality for historically marginalized individuals – discounting the need for laws or policies that go beyond the prohibition of intentional discrimination. *See e.g.*, STEVEN GROVES, HERITAGE FOUNDATION, FURTHERING THE U.N.'S LEFTIST AGENDA: THE U.N. CERD COMMITTEE REPORT 3 (Apr. 2008) (critiquing the recommendations from the UN treaty body to the United States, and the findings that racial disparities are a sign that discrimination continues).

²⁰ Heritage Foundation, Index of Economic Freedom, *supra* Note 19 (citing Milton and Rose Friedman) (“A society that puts equality – in the sense of equality of outcome – ahead of freedom will end up with neither equality nor freedom. The use of force to achieve equality will destroy freedom, and the force, introduced for good purpose, will end up in the hands of people who use it to promote their own interests. Government's excessive intrusion into wide spheres of economic activity comes with a high cost to society as a whole. By substituting political judgments for those of the marketplace, government diverts entrepreneurial resources and energy from productive activities to rent-seeking, the quest for economically unearned benefits. The result is lower productivity, economic stagnation, and declining prosperity.”).

²¹ *See, e.g.*, Jayne Huckerby & Sarah Knuckey, *Pompeo's “Rights Commission” is Worse Than Feared, Part I*, Just Security (Mar. 13, 2020), <https://www.justsecurity.org/69150/pompeos-rights-commission-is-worse-than-feared-part-i/> (“[T]he commission is poised to adversely shape U.S. foreign policy, dismay U.S. allies, provide a playbook for other conservative governments looking to follow suit, and produce normative scaffolding for other, similarly conservative moves within the United States.”); Rob Berschinski & Andrea Worden, *Pompeo's Commission on Unalienable Rights Looks to be a “Win-Win” for China*, Just Security (Mar. 23, 2020), <https://www.justsecurity.org/69323/pompeos-commission-on-unalienable-rights-looks-to-be-a-win-win-for-china/>.

²² *See e.g.* Carol Morello, *U.S. withdraws from U.N. Human Rights Council over perceived bias against Israel*, THE WASHINGTON POST (Jun. 18, 2018), https://www.washingtonpost.com/world/national-security/us-expected-to-back-away-from-un-human-rights-council/2018/06/19/a49c2d0c-733c-11e8-b4b7-308400242c2e_story.html (describing the Trump Administration decision to withdraw from the U.N. Human Rights Council); Ted Piccone, *US Withdrawal from the UN Human Rights Council is “America Alone,”* BROOKINGS INSTITUTE (Jun. 20, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/06/20/u-s-withdrawal-from-u-n-human-rights-council-is-america-alone/> (elaborating on the Trump Administration's withdrawal from the U.N. Human Rights Council); Thomas Adamson, *U.S. and Israel officially withdraw from UNESCO*, PBS NEWS (Jan. 1, 2019) <https://www.pbs.org/newshour/politics/u-s-and-israel-officially-withdraw-from-unesco> [(describing the Trump Administration decision to withdraw from UNESCO).

²³ *See, e.g.*, Jacqueline Howard, *Trump administration pushes UN to drop mentions of reproductive health from official documents*, CNN (Sep. 13, 2019), <https://www.cnn.com/2019/09/23/health/alex-azar-united-nations-universal-health-coverage-bn/index.html> (describing the removal of language regarding reproductive health from U.N. documents).

²⁴ *See, e.g.*, INTERNATIONAL WOMEN'S HEALTH COALITION, CRISIS IN CARE: YEAR TWO IMPACT OF TRUMP'S GLOBAL GAG RULE (2019), (analyzing effects of the Trump Administration's Global Gag Rule).

health risks.²⁵ While the United States continues to allocate funding for USAID development programs that support infrastructure abroad, including health, water, and sanitation projects, the Trump Administration has battled to reduce that funding.²⁶ Further, the Commission was established within a domestic context where legal protections related to health, housing, and most spheres of life, have been rolled back significantly.²⁷ Drastic cuts in federal funding to healthcare,²⁸ housing,²⁹ and education³⁰ have occurred at the same time.

The establishment of the Commission is particularly consequential because it represents an officially sanctioned U.S. effort to redefine what “human rights” means – with long term implications at home and abroad. This proposed redefinition risks undermining economic and social protections by chipping away at the underlying normative basis of economic and social rights.

²⁵ See, e.g., James McBride, *The Consequences of Leaving the Paris Agreement*, COUNCIL ON FOREIGN RELATIONS (June 1, 2017), https://www.cfr.org/background/consequences-leaving-paris-agreement?gclid=EAIaIQobChMI3-qaqYWD5QIVAmKGCh09DA9TEAAYBCAAEgLvPD_BwE (framing the potential environmental consequences of U.S. withdrawal from the Paris Agreement); Rick Duke, *Leaving the Paris Agreement Is a Bad Deal for the United States*, FOREIGN POLICY (May 19, 2019), <https://foreignpolicy.com/2019/05/19/leaving-the-paris-agreement-is-a-bad-deal-for-the-united-states/> (explaining the foreign policy consequences of U.S. withdrawal from the Paris Agreement).

²⁶ See, e.g., Adva Salvinger, *US budget slashes global development funding, stresses burden sharing*, DEVEX (Mar. 12, 2019), <https://www.devex.com/news/us-budget-slashes-global-development-funding-stresses-burden-sharing-94464> (noting that “In addition to the proposed cuts, the budget repeatedly mentions the need for other countries to share the burden for funding various global health and development priorities and pointed to aid being seen as a foreign policy tool.”); *Press Release: Congress Approves Final FY 19 Spending Bill, President Complains, But Said Likely to Sign Today*, MILLENNIUM WATER ALLIANCE (Feb. 15, 2019), <https://mwawater.org/advocacy/get-involved> (“International Affairs, which includes USAID, the Department of State, and the Millennium Challenge Corporation, got a total of \$56.1 billion, a slight increase over \$55.9 billion in FY 2018. This is another rebuke to the Administration’s three-year campaign to gut foreign assistance, so far soundly rejected every time by both parties in Congress. As of this afternoon, Trump is said to be expected to sign the bill into law before tonight’s shutdown deadline.”).

²⁷ See Tracy Jan, *HUD raises the bar for bringing discrimination Claims*, WASHINGTON POST (Aug. 16, 2019), <https://www.washingtonpost.com/business/2019/08/16/hud-raises-bar-bringing-discrimination-claims/>; Nermeen Arastu, *Trump’s Public Charge Rule is a Cover-up for Racism – with Disturbing Historical Origins*, NEWSWEEK (Aug. 21, 2019), <https://www.newsweek.com/trumps-public-charge-rule-cover-racism-disturbing-historical-origins-opinion-1455485> (describing how the efforts to promulgate a new public charge rule fuel anti-immigrant sentiment and have been challenged as “xenophobic and racist”).

²⁸ The Administration has sought to strike down provisions of the Affordable Care Act, raised healthcare premiums, removed penalties for companies that violate the individual mandate, and more recently, and allowed states to create significant conditions on Medicaid access. See Micheal Hiltzik, *The 10 worst things Trump has done to harm your healthcare*, LOS ANGELES TIMES (Aug. 20, 2019), <https://www.latimes.com/business/story/2019-08-20/ten-worst-trump-steps-on-healthcare>.

²⁹ See e.g., George Zornick, *How Trump Plans to Evict Poor Families From Public Housing*, THE NATION (Feb. 16, 2018), <https://www.thenation.com/article/how-trump-plans-to-evict-poor-families-from-public-housing/> (describing proposed cuts to the federal budget that would limit funding for affordable housing programs, particularly vouchers and lead to a likely increase in evictions from public housing).

³⁰ See Adam Harris, *The Trump Administration Really Wants to Cut Education Funding. Congress Doesn’t*, ATLANTIC (Mar. 11, 2019), <https://www.theatlantic.com/education/archive/2019/03/trump-administration-would-cut-education-budget-again/584599>; COLETON WHITAKER ET AL., CENTER FOR AMERICAN PROGRESS, *THE TRUMP ADMINISTRATION’S SLOW BUT STEADY UNDOING OF THE DEPARTMENT OF EDUCATION* (Nov. 20, 2017).

II. Ensuring Dignity and Equality Requires Recognition of the Full Panoply of Rights on Equal Footing

Civil and political rights and economic and social rights (ESRs) are inextricably linked. Interpreting human rights to exclude the full array of human rights has the practical impact of restricting the exercise of true freedom to a privileged few. Such a narrow interpretation is also counter to bedrock international human rights principles.

A. Domestic Struggles for Racial Justice Illustrate the Nexus between Economic and Social Rights and Equality

Evisceration of economic and social protections, in tandem with denial of the fundamental role of government in promoting equality and non-discrimination, is an affront to almost every social justice battle fought within the United States historically and today. From the earliest documented effort to use the UN as a vehicle for accountability for racial injustice (1947),³¹ to the March on Washington (1963),³² to the current Black Lives Matter Movement³³ and the Poor People's Campaign,³⁴ the struggle for human rights has linked economic and racial justice. While the United States has consistently fought to avoid global accountability for failing to recognize and implement economic and social rights,³⁵ these rights are long recognized and protected.

³¹ See *infra* Notes 36-38; Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955* (2003); Hope Lewis, *New Human Rights? U.S. Ambivalence Toward the International Economic and Social Rights Framework*, 122-127; 128-130 in BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES (2009).

³² See A. Philip Randolph, *Speech at the March on Washington*, reprinted in Andrew Kersten, A. Philip Randolph: A Life in the Vanguard, at 155-156 (2007) (“We want a free democratic society dedicated to the political, economic, and social advancement of man along moral lines. Now, we know that real freedom will require many changes in the nation’s political and social philosophies and institutions...The sanctity of private property takes second place to the sanctity of the human personality”).

³³ The Movement for Black Lives is founded on the idea “there can be no liberation for all Black people if we do not center and fight for those who have been marginalized.... working together to create and amplify a shared agenda, we can continue to move towards a world in which the full humanity and dignity of all people is recognized,” and the Black Lives platform demands economic justice, community control and participation. *Platform*, MOVEMENT FOR BLACK LIVES (2018) <https://policy.m4bl.org/platform/>.

³⁴ See *Mission Statement*, POOR PEOPLE’S ECONOMIC HUMAN RIGHTS CAMPAIGN (2019), <http://economichumanrights.org/mission-statement/> (“The Poor People’s Economic Human Rights Campaign is committed to uniting the poor across color lines as the leadership base for a broad movement to abolish poverty. We work to accomplish this through advancing economic human rights as named in the universal declaration of human rights- such as the rights to food, housing, health, education, communication and a living wage job.”); see also *Poor People’s Campaign Letter to the United Nations Human Rights Council*, POOR PEOPLE’S CAMPAIGN, <https://www.poorpeoplescampaign.org/united-nations/> (“For a nation that declared it was founded upon principles of equality, systemic inequality has never been starker. In the richest nation in the world, 140 million people live in poverty. The richest 1 percent in our country hold more wealth than the bottom 90 percent combined. And our leaders continue to feed us the same moral narrative: We blame poor people for their poverty, when in fact the government has gutted social programs. The federal minimum wage of \$7.25 has not been raised since 2009, and on average, wages for all workers in the U.S. have raised \$0.04 a year since 1979.”).

³⁵ While the United States federal government contributed to the creation of the United Nations architecture, there was also a strong push to ensure the UN would not weigh in on questions of domestic affairs, particularly related to racial discrimination, Jim Crow laws, and lynching. See Anderson, *supra* Note 31, at 4, 58-165, 180 (describing that the Genocide Convention was not placed before the US Senate because “Southern senators ‘were afraid’ in particular that the Genocide Convention was a ‘back door’ method of enacting federal anti-lynching legislation.”); Lewis, *supra* Note 31, at 114-121. U.S. reticence to engage with UN human rights mechanisms has

Undermining the connection between economic and social rights and the ability to exercise true freedom for all ignores the lived experience of many individuals fighting for equality and dignity, and threatens harm to the communities on the frontlines of human rights struggles. It is the populations that have been historically marginalized that stand to lose if human rights protections are narrowed.

Securing economic and social rights protections has been central to the modern struggle for racial justice by African Americans – one of the longest standing human rights struggles in the United States. In 1947, before the adoption of the Universal Declaration of Human Rights (UDHR), the National Association for the Advancement of Colored Peoples (NAACP) submitted one of the very first petitions to the United Nations seeking to challenge the laws and policies that were perpetuating inequality and discrimination and emphasizing that economic justice and social well-being were fundamental to address racial inequality. The 1947 *Appeal to the World: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and An Appeal to the United Nations for Redress* spells out the reality of life for African Americans, describing legal, political, and economic barriers to equality in vivid detail.³⁶ The *Appeal* highlighted that despite expanded legal protections, the persistence of violence and discrimination at the hands of law enforcement ensured freedom remained out of reach, demonstrating “calloused disregard for human rights.”³⁷ African Americans were continually denied economic and social protections, and despite federal prohibitions on discrimination, inequities on the basis of race proliferated. The *Appeal* underscored that “the Emancipation Proclamation and the 13th, 14th, and 15th Amendments were not sufficient to overcome the handicap of 250 years of chattel slavery in the economic struggle which characterizes an industrial civilization. Governmental non-action in this area, however, is partly determinative of the present legal and social status of the Negro.”³⁸

When the appeal was drafted in 1947, it was clear that inequality could not be addressed without economic and social rights. The same is true today in the United States, as genuine equality remains elusive. Despite significant gains in legal protections against discrimination, racial and ethnic disparities abound across almost all social indicators. The failure to embrace and protect economic and social rights has left many behind and entrenched inequality. Compared to OECD countries, the United States ranks poorly along indicators of income inequality and the poverty rate.³⁹ According to 2016 data from the Bureau of Labor Statistics, Black and Hispanic individuals are twice as likely to be among the working poor than White

persisted, and has been roundly critiqued as hypocritical. *See generally* American Exceptionalism and Human Rights (M. Ignatieff, ed.) (Princeton Press: 2005). U.S scholars have noted 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.” *See* Harold Hongju Koh, *A United States Human Rights Policy for the 21st Century*, 46 ST. LOUIS U. L.J. 293, 308 (2002) (paraphrasing statement by Louis Henkin).

³⁶ NAACP, AN APPEAL TO THE World 56 (1947).

³⁷ *Id.* at 49.

³⁸ *Id.* at 56.

³⁹ For poverty rate the US comes in 35th and the only countries with a higher rate are Israel, Costa Rica and South Africa. *See* OECD (2019), Poverty rate (indicator). doi: 10.1787/0fe1315d-en; For income inequality, the United States is 34th, with higher rates found in Turkey, Chile, Mexico, Costa Rica, and South Africa. OECD (2019), Income inequality (indicator). doi: 10.1787/459aa7f1-en

or Asian individuals.⁴⁰ This stays constant even for those with a higher education degree.⁴¹ The U.S. rates last in healthcare access and quality when compared to similarly wealthy OECD Countries.⁴² Maternal mortality rates have been on the rise over the past two decades, with Black women 3-4 times more likely than White women to die as a result of pregnancy and childbearing.⁴³ When we take stock of where we are, it is clear that an approach that eschews economic and social protections leads to poor outcomes across the board, but communities of color are the most negatively impacted.

To address these persistent inequities, domestic social justice organizations continue to center economic and social rights in the fight for equality and racial justice. Today, efforts to foster equality by addressing disparities in health and maternal mortality are framed in human rights terms.⁴⁴ Support for the right to housing proliferates, underscoring that affordable, adequate housing is a fundamental component to a life with dignity.⁴⁵ Across the country, from California to Pennsylvania, there is mobilization to secure the rights to water⁴⁶ and

⁴⁰ Bureau of Labor Statistics, *A profile of the working poor, 2016* (July 2018), at <https://www.bls.gov/opub/reports/working-poor/2016/home.htm>.

⁴¹ *Id.*

⁴² Bradley Sawyer & Daniel McDermott, *How does the quality of the US healthcare system compare to other countries?*, HEALTH SYSTEM TRACKER (Mar. 28, 2019), <https://www.healthsystemtracker.org/chart-collection/quality-u-s-healthcare-system-compare-countries/>.

⁴³ Rachel Meyer *et al*, *The United States Maternal Mortality Rate Will Continue to Increase Without Access to Data*, HEALTH AFFAIRS (Feb. 4, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20190130.92512/full/>; see also GOPAL SINGH, U.S. DEP'T OF HEALTH & HUMAN SERVICES, HEALTH RESOURCES & SERVICES ADMINISTRATION, MATERNAL & CHILD HEALTH BUREAU, MATERNAL MORTALITY IN THE UNITED STATES, 1935-2007: SUBSTANTIAL RACIAL/ETHNIC, SOCIOECONOMIC, AND GEOGRAPHIC DISPARITIES PERSIST 2 (2010) (noting that despite an overall reduction in maternal mortality in the US, there are significant ongoing disparities based on race and socio-economic status).

⁴⁴ See Amanda Mull, *What It Means for Health Care to Be a Human Right*, ATLANTIC (Jun. 24, 2019), <https://www.theatlantic.com/health/archive/2019/06/health-care-human-right/592357/> (highlighting the prevalence of universal healthcare in presidential debates and popular support for guaranteed health care coverage); *What is the Human Right to Health and Health Care?*, NESRI (2019), <https://www.nesri.org/programs/what-is-the-human-right-to-health-and-health-care/> (“Healthcare as human right campaigns now exist in several U.S. states, inspired by the example of Vermont, which in 2011 became the first state to pass a law for a universal, publicly financed health care system.”); ADVANCING MATERNAL HEALTH AS A HUMAN RIGHTS ISSUE, CENTER FOR REPRODUCTIVE RIGHTS (2016).

⁴⁵ See *e.g.*, Meetal Jain, *Bringing Human Rights Home: The DC Right to Housing Campaign*, HUMAN RTS. BRIEF 17, no.3, 10-14 (2010) (describing organizing efforts in Washington, DC to secure the right to housing, grounded in international human rights principles); Eric Tars, *Housing as a Human Right*, NAT'L LOW INCOME HOUSING COALITION 1-2 (2019), https://nlihc.org/sites/default/files/AG-2019/01-06_Housing-Human-Right.pdf (highlighting ongoing national and international advocacy for the right to housing in the United States, providing comparative examples, and noting that at the time of writing, two federal agencies were working to “address criminalization of homelessness as a human rights issue.”); COLUMBIA LAW SCHOOL HUMAN RIGHTS INSTITUTE, HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY 15 (2012) (detailing local efforts to implement the human right to housing in Madison and Dane County, Wisconsin, as well as Eugene, Oregon).

⁴⁶ See, *e.g.*, S.B. 1215, 2018 Leg., Reg. Sess. (Cal. 2018) – California’s Right to Water Law; Rejane Frederick, *Water as a Human Right: How Philadelphia Is Preventing Shut-Offs and Ensuring Affordability*, CENTER FOR AMERICAN PROGRESS (Nov. 8, 2017), <https://www.americanprogress.org/issues/poverty/news/2017/11/08/441834/water-human-right-philadelphia-preventing-shut-offs-ensuring-affordability/> (discussing Philadelphia’s Water Affordability Plan); PATRICIA JONES, THE INVISIBLE CRISIS: WATER UNAFFORDABILITY IN THE UNITED STATES, UNITARIAN UNIVERSALIST SERV. COMM. (2016) (focusing on the perpetual challenge of water affordability).

sanitation,⁴⁷ and for laws and policies that implement these rights, which are essential to life and health.

These struggles are connected by an understanding that true freedom exists where individuals have the ability to participate in society on an equal basis, to influence decisions, and can enjoy to the conditions necessary to a life with dignity.⁴⁸ Civil and political rights are necessary but insufficient. The ability to live free from discrimination and torture are part of the foundation. But those rights alone fall short. A narrow vision of human rights – one that places the onus of securing an adequate standard of living solely on individuals and defines human rights primarily as requiring a lack of government intervention – leads to the result that true freedom eludes many. A narrowed vision requires a willful denial of what causes and perpetuates poverty. It further disregards foundational human rights principles, which are described in the following section.

B. The Link between Economic and Social Rights and True Freedom is Well-Established Globally

The United States, in partnership with global leaders, played a key role in articulating the Universal Declaration of Human Rights as a foundational vision of human rights, one which recognizes that civil and political and economic and social rights must be realized together to ensure dignity and equality in practice. The reality that economic and social rights are essential to a true ability to exercise freedom undergirds not only the UDHR, but core human rights treaties as well.⁴⁹

While the U.S. federal government has continually resisted the legal recognition of economic and social rights domestically, these rights comprise a core component of the international human rights corpus. If the Commission promotes a narrow vision of human rights, it will undermine long-recognized international protections, and its positions can be used to justify

⁴⁷ See FLUSHED AND FORGOTTEN, *supra* Note 6; CLOSING THE WATER ACCESS GAP, *supra* Note 6.

⁴⁸ Our definition reflects the underlying notions of freedom reflected by A. Philip Randolph, a civil rights movement leader in 1942 when he stated that “[A] community is democratic only when the humblest and weakest person can enjoy the highest civil, economic, and social rights that the biggest and most powerful possess” and that engaging in a domestic “fight for economic, political, and social equality, thus becomes part of the global war for freedom.” A. PHILIP RANDOLPH, WHY SHOULD WE MARCH? (1942). This definition stands in stark contrast a narrower vision of individual economic freedom, or freedom to be left alone. See *infra* Notes 19-20 and accompanying text.

⁴⁹ See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 22-27 (Dec. 10, 1948); International Covenant on Economic, Social, and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3. (entered into force Jan. 3, 1976) (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195, 218 (entered into force Jan. 4, 1969); The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), *adopted*, 1249 U.N.T.S. 13, (entered into force Sept. 3, 1981) (recognizing the right to sanitation specifically for rural women). While our focus here is on the UN System, it bears mentioning that economic and social rights are protected in regional human rights systems, including through The African Charter on Human and Peoples’ Rights (articles 15-17); The European Social Charter (articles 1-14; 31); and The Inter-American Protocol of San Salvador (which includes health and access to basic services in articles 10 and 11).

laws and policies that undermine equality in fact, as well as to abrogate laws and policies that promote an adequate standard of living in the U.S. and globally.⁵⁰

The UDHR, considered one of the foundational articulations of human rights, aims to promote freedom and justice, premised upon “dignity” and “equal and inalienable rights.”⁵¹ Inherent in the UDHR is the understanding that providing for individual freedoms alone would never achieve a fulsome vision of human rights. The UDHR places economic and social rights on equal footing with civil and political rights.⁵² Subsequent treaties spell out the specific obligations related to particular rights.⁵³ From their inception, modern human rights norms have reflected an understanding that governments are responsible for ensuring the full panoply of rights by proactively promoting well-being, as well as restraining actions that impede enjoyment of human rights. Fulfilling civil and political rights, as well as economic and social rights, entails positive and negative obligations.⁵⁴

Yet, resistance to enforceable economic and social rights, particularly from the United States, impacted the drafting of subsequent human rights treaties. These impacts include the bifurcation of UDHR principles into two separate treaties and mechanisms for human rights monitoring and enforcement.⁵⁵ U.S. resistance has also resulted in limited treaty ratification

⁵⁰ See Coleman Flowers & Kamuf Ward, *supra* Note 1, Part III.A for a more detailed discussion of Commission’s purported ideology; see also Huckerby *et al.*, *supra* Note 2; Huckerby & Knuckey, *supra* Note 21 and Berschinski & Worden, *supra* Note 21.

⁵¹ Universal Declaration of Human Rights, *supra* Note 49, at Preamble. The Declaration was developed at the beginnings of the Cold War and is the result of global negotiations on the core foundations of human rights. See, e.g., Carol Anderson, *supra* Note 31, Ch. 2-3 (2003); Sally-Anne Way, *The “Myth” and Mystery of US History on Economic, Social, and Cultural Rights: The 1947 “United States Suggestions for Articles to be Incorporated in an International Bill of Rights*, HUMAN RTS. Q. 36.4, 869-897 (2014).

⁵² Universal Declaration of Human Rights, *supra* Note 49. Article 30 underscores that the Declaration cannot be interpreted “as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

⁵³ The more specific obligations related to economic and social rights and civil and political rights are spelled out in the Convention on Economic and Social Rights and the Covenant on Civil and Political Rights.

⁵⁴ Considerable academic literature has addressed state obligations to implement human rights and the similarities and differences between economic and social rights and modes of implementation. See *Social Rights Judgments and the Politics of Compliance: Making it Stick* (Malcom Langford, César Rodríguez Garavito and Julieta Rossi eds., 2017); Iona Cismas, *The Intersection of Economic, Social and Cultural Rights and Civil and Political Rights* in Eibe Riedel, Gilles Giacca and Christophe Golay (eds.), *Economic, Social and Cultural Rights in International Law*, 448-472 (2014); Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003); Eisdé Asbjørn, *Realization of Social and Economic Rights and the Minimum Threshold Approach*, 10 HUMAN RIGHTS LAW JOURNAL 35 (1989); Philip Alston and Gerard Quinn, *The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights*, HUMAN RTS Q. 9.2, 159-160 (May 1987). Regarding the US Position specifically, see, Lewis, *supra* Note 3131, 122-127; 128-130.

⁵⁵ Domestically, the fear of global scrutiny of Jim Crow Laws, lynching, and other forms of legal discrimination, racism and violence led to significant political pushback against the adoption of human rights treaties, and to a compromise wherein President Eisenhower agreed not to seek further ratification of human rights treaties. See Lewis, *supra* Note 31, 118-119. Coupled with Cold War politics, the reality was US resistance to enforceable human rights standards, and ultimately to the bifurcation of human rights protections articulated in the UDHR into two separate covenants: the Covenant on Civil and Political Rights and the Covenant of Economic and Social Rights. The United States ratified the ICCPR in 1992, and has yet to ratify the ICESCR. Historically, the United States helped shape the UDHR, supporting the inclusion of economic and social rights. See Sally Anne Way, *The “Myth” and Mystery of US History of U.S. History on Economic, Social, and Cultural Rights: The 1947 “United States Suggestions for Articles to be incorporated in an International Bill of Rights*, HUMAN RTS.

by the United States.⁵⁶ To date, the United States has only ratified three of the core human rights treaties.⁵⁷

U.S. opposition to economic and social rights, however, does not negate the reality that ensuring equality requires non-discrimination in provision of services, means of redress, and due process. The right to vote necessitates systems for participation. The right to housing requires that adequate and affordable housing is accessible, and that government actors refrain from criminalizing individuals based on their status as homeless, for example.

Respecting and protecting human rights cannot be passive, nor can it be done by cherry picking which rights to protect. It is an ongoing and proactive affair. This is a lesson learned in challenging segregation in education, ensuring job opportunities for men and women, ensuring safe workplaces, facilitating well-being for the elderly. The exercise of basic rights and existence of economic and social protections go hand in hand.

While domestic social justice advocates continue to seek recognition and protection of the full panoply of human rights as described above in Part II.A, the current administration has been rolling back the limited protections that do exist and continues to undermine the mechanisms put in place to monitor and promote human rights compliance globally.⁵⁸ The following

Q. 36.4, 869, 874 (2014) (“The 1947 US Suggestions are significant not only because they belie standard assumptions about the US position on ESC rights but also because substantial parts of the US wording and provisions on economic, social, and cultural rights are closer to the text of the 1966 ICESCR than to the 1948 UDHR. A number of concepts and phrases that were later to become part of the ICESCR, including the concepts of “progressive realization,” “maximum use of resources,” and the specific formulation of rights such as the “right to the highest attainable standard of health,” appear to have clear roots in this 1947 US text.”); Cass Sunstein, *Economic Security: A Human Right*, AMERICAN PROSPECT (Sept. 20, 2004), <https://prospect.org/article/economic-security-human-right> (“The Universal Declaration of Human Rights, written in the shadow of FDR and accepted by the UN General Assembly in 1948, explicitly includes social and economic *guarantees*. The United States enthusiastically supported the declaration (but has been exceptionally unusual in refusing to ratify the International Covenant on Economic, Social, and Cultural Rights, which would help to enforce social and economic guarantees.”); Philip Alston, *Putting Economic and Social Rights Back on the Agenda in the United States* in *The Future of Human Rights* 120, 120-127 (Schultz, 2008) (Describing support for ESCRs by United States Presidents Dwight Eisenhower, Harry Truman, Lyndon Johnson and Gerald Ford, and the shift in support that began with President Reagan. Notably, during the term of Lyndon Johnson that the US joined the drafting of the Covenant on Economic and Social Rights (ICESCR) and voted for ratification of ratification, and supported inclusion of economic and social protections in the treaty on the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

⁵⁶ See Lewis, *supra* Note 31, 118-119. The arguments levied against adoption of human rights treaties included protection of U.S. sovereignty and defense of the U.S. federal system. The same concerns motivate the Reservations, Understandings and Declarations that the United States has attached to the human rights treaties it has ratified since that time: The Convention on the Elimination of All Forms of Racial Discrimination; The Convention Against Torture, and the Covenant on Civil and Political Rights. See Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L L. 341, 346 (1995).

⁵⁷ *Id.* The US has not ratified the global conventions on economic and social rights, women’s rights, disabilities, rights of children, on migrant workers and their families, or on enforced disappearances. When the U.S. does ratify treaties, it does so with significant limitations on their domestic applicability. See Lewis, *supra* Note 31.

⁵⁸ See *supra* Notes 22-30; 40-44 and *infra* Notes 59 – 60 and accompanying text; see also Human Rights Watch, *U.S. Does Not Nominate Representative to Critical Rights Body* (Apr. 16, 2019), <https://www.hrw.org/news/2019/04/16/us-does-not-nominate-representative-critical-rights-body>; See also ACLU, Lawyers’ Committee for Civil Rights, NAACP & US Human Rights Network, *Deadline Looms for US Report to the UN on Racial Discrimination* (Nov. 2017), <https://www.naacp.org/latest/deadline-looms-u-s-report-un-racial-discrimination/>. The US has also withdrawn from engagement with UN Special Procedures- declining

section concludes with some of the ways the Commission can adversely impact on human rights.

CONCLUSION

While U.S. push back on international human rights norms and mechanisms is long-standing, it has reached new heights in recent years. The United States has withdrawn from UN engagement, both leaving the UN Human Rights Council,⁵⁹ and cutting UN funding.⁶⁰

The Unalienable Rights Commission may be the newest example of backlash against human rights through U.S. policy – a formal manifestation of current attacks on the international norms that provide for dignity and an adequate standard of living for all. These attacks bear similarities to earlier pushback against strong human rights norms, seeking to limit how human rights are interpreted and what obligations accrue to governments.

While the United States cannot unilaterally redefine global human rights laws and protections, U.S. positions on human rights may influence interpretations of human rights law in the United States, as well as in other countries, and shape the work of multilateral bodies.

The Commission's rollout and statements by its members, supporters, and the U.S. Secretary of State signal that the aim of its "fresh thinking" could be to develop a narrowed interpretation of human rights. Many of these statements suggest that the Commission's recommendations will include a prioritization of certain civil and political rights, particularly religious freedom, and evisceration of protections for women, LGBTQI individuals, as well for the economic and social rights essential for an adequate standard of living. Further, when the Commission began to garner public attention in 2019, a flurry of op-eds and NGO statements were released, some with significant mischaracterizations of existing global human rights norms.⁶¹

to extend invitations for visits to the United States or respond to communications from these independent experts. See Ed Pilkington, *US halts cooperation with UN on potential human rights violations*, THE GUARDIAN (Jan. 4, 2019), <https://www.theguardian.com/law/2019/jan/04/trump-administration-un-human-rights-violations> (noting that "the state department has ceased to respond to official complaints from UN special rapporteurs, the network of independent experts who act as global watchdogs on fundamental issues such as poverty, migration, freedom of expression and justice.").

⁵⁹ See e.g., Morello, *supra* Note 22 (describing the Trump Administration decision to withdraw from the U.N. Human Rights Council).

⁶⁰ See Nick Cummings Bruce, *Budget Cuts May Undercut the UN's Human Rights Committees*, NY TIMES (May 24, 2019), <https://www.nytimes.com/2019/05/24/world/un-budget-cuts-human-rights.html>.

⁶¹ For example, the UDHR recognizes a "right to social security" (Art. 22) and "social protection" (Art 23) and article 25 details that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." Critics of economic and social rights often mischaracterize rights protections in an effort to undercut their validity. See e.g., Roger Pilon, *Will the State Department's new Commission on Unalienable Rights get it right?*, THE HILL (Jul. 11, 2019), <https://thehill.com/opinion/civil-rights/452493-will-the-state-departments-new-commission-on-unalienable-rights-get-it> (mischaracterizing the UDHR's provisions as including a right "to jobs", when in fact, the UDHR, in article 23 states that "(1) Everyone has the right to work, to free choice of employment, to just and favourable

These narratives together depict an effort to reimagine human rights protections and redefine who is entitled to them, and to narrow government obligations to meet basic needs, undercutting the links between equality and freedom in contravention of foundational international human rights protections.

If the Commission perpetuates these ideas, its conclusions can be used to justify assaults on rights protections at a time when global human rights norms and institutions are under attack.⁶² There is certainly precedent for establishing sham commissions, like the Voter Fraud Commission, that purported to protect basic rights and institutions while in reality undermining them.⁶³

An attempt to reprioritize rights would disproportionately harm communities of color, and ethnic, linguistic, and racial minorities globally – individuals and communities already most impacted by historic and ongoing racism, xenophobia, and discrimination. The lack of ideological and experiential diversity on the Commission adds to the concern that its aims are a one-sided narrowing of human rights protections, which will harm already marginalized communities.⁶⁴

conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”). Supporters of the Commission have espoused views that confirm that reproductive choice and sexual freedom are likely to be trampled by the Commission. On the heels of Pompeo’s announcement, C-FAM (an organization committed to eliminating reproductive choice for women), wrote a fundraising e mail lauding the Commission: “This Commission will aim an intellectual dagger at the heart of the radical expansion of rights that are not rights that the hard left promotes at the UN ... these new rights that are not rights have the inevitable tendency to undermine fundamental rights, like the right to religious freedom, the right to speech, and much else.” C-FAM, *Amazing opportunity for C-FAM and the unborn child at the UN* (Jul. 19, 2019), <https://email.opusfidelis.com/t/ViewEmail/j/D06B88B021F872B12540EF23F30FEDED/34A1EB8166AF5B7B46778398EADC2510>.

⁶² See, e.g., Lindsay Maisland, COUNCIL ON FOREIGN RELATIONS, *Is China Undermining Human Rights at the United Nations?* (Jul. 9, 2019), <https://www.cfr.org/in-brief/china-undermining-human-rights-united-nations> (discussing China’s efforts to avoid review of its own human rights record and undercut the work of UN human rights mechanisms more broadly).

⁶³ See Editorial, *The Bogus Voter-Fraud Commission*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/opinion/sunday/the-bogus-voter-fraud-commission.html> (highlighting that the Voter Fraud Commission aims “not to restore integrity to elections but to undermine the public’s confidence enough to push through policies and practices that make registration and voting harder, if not impossible, for certain groups of people who tend to vote Democratic.”); Abigail Abrams, *California, New York and Virginia Refuse to Give Personal Data to President Trump’s Voter Fraud Commission*, TIME (July 30, 2017), <https://time.com/4840695/trump-voter-fraud-commission-personal-data/> (noting state refusal to cooperate in order to avoid wasting resources).

⁶⁴ See James Loeffler, *How Mike Pompeo’s Professors Hijacked a Scholarly Debate*, CHRONICLE OF HIGHER ED. (Jul. 31, 2019) (discussing the likelihood that the Commission has “a deeply conservative social and religious ideological agenda,” which “might privilege white Christians and exclude Muslims and LGBTQ people, among others, from its umbrella of protection.” The Heritage Foundation, which supports the Commission, has long critiqued human rights, and undercut efforts to advance racial equity in the United States through proactive measures, and critique efforts to strengthen human rights implementation in the United States. See *supra* Note 19; see also Steven Groves, *U.S. National Human Rights Institution: A Bad Idea*, HERITAGE FOUNDATION (Nov. 15, 2013), <https://www.heritage.org/report/us-national-human-rights-institution-bad-idea> (rejecting the concept of a domestic human rights monitoring body); Emilie Kao and Grace Melton, *The U.S. Must Protect Human Rights of All Individuals Based on Human Dignity- No on Membership in Identity Groups*, HERITAGE

International human rights norms are grounded in the understanding that economic and social protections are vital to true equality and freedom. Consistent with long-standing human rights norms and human rights laws, the Commission should affirm a vision of human rights that is inclusive, comprehensive, and that affirms that we each deserve the full panoply of rights protections by virtue of our humanity.

ANNEX

The Columbia Law School Human Rights Institute, founded in 1998, advances international human rights through education, advocacy, fact-finding, research, scholarship, and critical reflection. The Institute works in partnership with advocates, communities, and organizations pushing for social change to develop and strengthen the human rights legal framework and mechanisms, promote justice and accountability for human rights violations, and build and amplify collective power in the United States and throughout the world. The Institute's Human Rights in the U.S. Project challenges discrimination on the basis of race and ethnicity, advances economic and social rights protections, and promotes gender equity in order to combat inequality in the United States. Through this project, the Institute works to build the capacity of state and local governments to use human rights in their daily work and secure federal support for state and local human rights implementation.

The Center for Rural Enterprise and Environmental Justice (CREEJ), was preceded by the Alabama Center for Rural Enterprise (ACRE), and evolved as an effort to address the root causes of poverty in Alabama. This led to the need to create a model that could be replicated in rural communities across the United States. Efforts to address the problems revealed a complex set of issues that needed multidisciplinary, grassroots-led solutions. One central issue that continued to surface was the lack of infrastructure, particularly wastewater infrastructure, necessary for sustainable economic development. The mission of CREEJ is to reduce health and economic disparities by improving access to clean air, water, and soil in marginalized rural communities by influencing policy, inspiring innovation, catalyzing relevant research, and amplifying the voices of community leaders, all within the context of a changing climate.

FOUNDATION (May 2018), <https://www.heritage.org/global-politics/report/the-us-must-protect-human-rights-all-individuals-based-human-dignity-not> (“Efforts to establish new rights and privileges based on membership in special groups undermines the logic of universal human rights, which is that every person has inherent human dignity regardless of his or her race, gender, national origin, or religion.”).