



Commission on Unalienable Rights

Testimony of Kenneth Roth, Executive Director, Human Rights Watch
January 10, 2020

Good afternoon. My name is Kenneth Roth. I am the executive director of Human Rights Watch, a position I have held for the past 26 years. I thank the members of the commission for inviting me to testify today.

Human Rights Watch was founded in 1978 as “Helsinki Watch” to investigate human rights violations in countries that signed the Helsinki Accords. Since then, our work has expanded to more than 100 countries on five continents. We investigate and document human rights abuses across the spectrum of rights, including extrajudicial killings and deprivation of liberty, government takeovers of media, arbitrary arrest of peaceful activists and political opposition figures, and such economic and social rights as discrimination in access to education, barriers to adequate health care, and restrictions on the rights to food and water. We are sensitive to the rights of people who are most likely to face discrimination, including women, children, LGBT people, and people with disabilities. When families victimized by war crimes find no justice at home, we champion international justice. When communities experience devastation at the hands of seemingly unaccountable companies, we ensure that governments, development banks, and businesses live up to their rights-related obligations. Human Rights Watch promotes and defends all human rights and is consistent with the international human rights framework, making no distinction among civil and political rights and economic, social and cultural rights.

When Secretary of State Mike Pompeo announced the formation of this commission in July, I was—and remain—concerned. Its announcement and subsequent open hearings have been fraught with threats to the very human rights that the commission purports to strengthen. This is because, as Secretary Pompeo suggested, the purpose of this commission is not to uphold all rights but to pick and choose among them. In his remarks he said, “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, ought it to be honored?” The secretary justified this exercise by citing an alleged conflict among rights. He said, “as human rights claims have proliferated, some claims have come

into tension with one another, provoking questions and clashes about which rights are entitled to gain respect.”

In my remarks today, I will answer the secretary’s questions directly, using examples from Human Rights Watch’s extensive global research. As I will show, international law is clear on what human rights are and how they work in tandem with one another. It also provides guidance when there is tension among rights-holders.

Human rights do not exist in the eye of the beholder. Pretending that they do would create a dangerous opening that rights abusers the world over would be happy to exploit. Rather, the Universal Declaration of Human Rights and subsequent international treaties, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, codify what they term “inalienable” human rights. These treaties have been widely ratified, although, as you are aware, the United States signed but has not ratified the latter covenant. The Declaration and treaties provide indisputable answers to what is a human right. They are based not on the whims of any particular government but upon inclusive negotiations in which the US government played a significant role.

Further, promoting the idea that there has been a “proliferation” of human rights is dangerous and wrong. In fact, there are only nine core human rights treaties, with the most recent, for people with disabilities, adopted in 2006. However, social movements that have advanced equality, including the civil rights movement, the women’s rights movement, the LGBT rights movement, and the disability rights movement, among others, have rightfully demanded that existing rights be extended to all people. If this commission does anything, it should affirm that human rights do and should extend to all people, everywhere, and are a source of protection and inclusion rather than exclusion.

Those who wish to deny rights to certain segments of the population have sometimes claimed that human rights advocates are inventing “new rights” or “special rights.” That accusation is often leveled against those who seek to prevent discrimination against populations that are especially vulnerable to abuse, such as lesbian, gay, bisexual, and transgender people. But there’s nothing “new” or “special” about the core rights that they seek recognition of; they simply want those rights applied to them. Human Rights Watch’s large body of work on the rights of LGBT people includes, most recently, advocating for the rights of transgender women in Lebanon, who are discriminated against on the basis of their gender identity when they try to access education, housing, health care, and employment. It also includes calling for an end to arbitrary arrests and forced anal examinations of LGBT people in Uganda, and challenging Russia’s discriminatory law that prohibits presenting LGBT issues to children in a positive light. Such work is firmly rooted in rights protected under existing treaties.

My many colleagues who are on the ground every day, documenting human rights violations around the world, can attest that the challenges they are documenting have nothing to do with a mythical proliferation of rights, but rather, with governments' failure to respect the body of established rights enshrined in international law. If there is anything new, it is that the victims are often segments of the population who have long suffered in the shadows of state neglect but are now demanding to be included in the protection that established rights provide to most others.

Whether we are documenting the denial of education to Rohingya refugee children in Bangladesh; the violation of the right to health through the use of dangerous pesticides and dumping of industrial waste in development projects in the Democratic Republic of Congo, funded by European banks; the denial of medical care to people in abusive detention in Egypt; or the deaths of women and girls in the Dominican Republic as a result of its total ban on abortion, we rely on a set of globally recognized, well-established international human rights standards.

These internationally recognized standards are not new, yet some critics claim they represent an expansion or so-called "proliferation of rights." I would like to address this issue head on, as the State Department itself has decided in recent years to distance itself from support of reproductive rights, and this administration has explicitly stated that a right of access to abortion does not exist under international law. While the term "abortion" may not be found mentioned explicitly in treaties, international human rights bodies and experts have repeatedly found that the realization of women's human rights requires access to health care, including reproductive health care. Authoritative interpretations of international human rights law have recognized the link that exists between accessing reproductive health care, including abortion, and the rights to health, bodily integrity, nondiscrimination and equality, privacy, information, and the right to decide on the number and spacing of children. A state's obligation to protect women's right to life requires access to reproductive health care, as data show that restrictive abortion laws contribute to preventable maternal deaths. So clear is the tie between restrictions in access to reproductive health and women's human rights that the UN Committee against Torture has expressed concern at the severe physical and mental anguish and distress experienced by women and girls due to abortion restrictions, and concluded that criminalization and inaccessibility of abortion can be incompatible with a government's duty to uphold the right to freedom from torture and other cruel, inhuman, or degrading treatment or punishment.

The secretary has also raised a purported tension among rights. In fact, when documenting rights violations, we often find that, rather than human rights working against each other, abuses are intertwined and supportive of each other: the deprivation of rights in one area tends to create conditions for the deprivation of rights in others. For example, in Venezuela, beyond our long-time documentation of violations of political rights, Human Rights Watch researchers exposed the extensive violations of the rights to health and food that are killing

Venezuelans and causing millions to flee. We found a health system in utter collapse with increased levels of maternal and infant mortality; the spread of vaccine-preventable diseases, such as measles and diphtheria; and increases in the prevalence of infectious diseases such as malaria and tuberculosis. Data we analyzed show high hospital admissions of malnourished children. The Venezuelan government's failure to report public health information and its suppression of those speaking out about health conditions within the country, all while the country's health facilities continue to deteriorate, represent a violation of Venezuela's obligations to respect, protect, and fulfill the right to the highest attainable standard of health. Those deprivations are often a direct consequences of the Maduro government's actions, but they are also a major reason why the Venezuelan people are speaking out, often at great risk, calling for a more accountable government, and why so many people are fleeing the country, creating one of the most dire refugee situations the region has faced. In other words, violation of their rights to health and food are undermining their political rights.

We find this interconnectedness frequently: when one set of rights is upheld, it tends to create the conditions for greater respect for other sets of rights, while when one set of rights is compromised, respect for others is often debilitated as well. For example, without access to education, a girl may be forced into child marriage, be more susceptible to trafficking, experience higher levels of abuse and violence, be shut out from the formal labor market, and never be able to take part in the political life of her community. Likewise, for persons with disabilities, including children, such as in Nigeria, where Human Rights Watch researchers have found that thousands of people with mental health conditions lack access to health care, but are instead detained, chained, and subject to physical abuse and violence, depriving them not only of their rights to health and dignity, but also to freedom of movement, freedom from torture, and any ability to access other civil and political rights.

Similarly, corruption is a major impediment to a government's ability to respect its people's economic and social rights—to provide such essentials as housing, food, water, jobs, and education. Deprivation of those rights may lead to political protest and, in turn, repression. One such example comes from Iraq's Basra province. In 2018, over 100,000 Basrawis were sent to the hospital with symptoms from contaminated water due to mismanagement and corruption. For three decades, Iraq has failed to uphold its obligations under several international treaties to respect the right to water, sanitation, and health. The consequences of the water crisis are far reaching: not only has it led to tens of thousands being hospitalized, degradation of agriculture lands, and jeopardized livelihoods, but it also led to protests in mid-2018 that Iraqi security forces responded to with excessive force, killing and wounding demonstrators. In Equatorial Guinea, for example, an oil-rich country has many people mired in poverty because President Obiang's highly repressive rule precludes people from challenging his blatant and shocking corruption. The best antidote to corruption is a free press, a vigorous civil society, and a responsive, democratic government.

Just in recent weeks, a political campaign to promote the rights of a particular religious group, Hindus, at the expense of another, Muslims, has led to serious instability in India. Indians have taken to the streets in protest of a discriminatory law that grants automatic citizenship only to non-Muslim irregular immigrants who are minorities in neighboring Muslim-majority countries. Security forces in Indian states ruled by the ruling Hindu nationalist Bharatiya Janata Party have responded with excessive and at times lethal force against the protesters—arresting hundreds and killing more than two dozen—and shutting down the internet and limiting public transportation. The Indian government’s apparent intent to maintain this discrimination against Muslims, in violation of the right to freedom of religion and to be free from discrimination, has led it to violate rights of expression and peaceful assembly. This cascading impact shows that human rights should not be viewed in isolation from one another.

A similar link can be found in China’s northwestern Xinjiang region, where repression of Uighurs and other Turkic Muslims, grounded in violations of their religious freedom, has taken the form of mass arbitrary detention for forced indoctrination, the separation of children from their families, and the creation of a highly intrusive surveillance state.

A supposed tension between rights is often cited with respect to women’s rights, but that “tension” is typically a pretext to deprive women and girls of their human rights. For example, in the case of child marriage, proponents say that customary or religious beliefs dictate protecting the honor of girls or family through early marriage, with the result that girls who marry young are often denied a range of human rights: many must discontinue their education, face serious health risks from early and multiple pregnancies, and suffer sexual and domestic violence. Human Rights Watch research in Malawi, South Sudan, Tanzania, Zimbabwe, Afghanistan, Bangladesh, Nepal, and Yemen has found that customary practices and religious beliefs, intersecting with gender discrimination and poverty, poor access to education and health services, and weak justice mechanisms, fuel the practice.

Perhaps this tension is best understood in the context of abortion, where some call for a balance of the “rights” of healthcare providers to cite their religious beliefs in refusing to provide reproductive health care against the right of women and girls to access that care. A resolution of those tensions has already been elaborated by the UN Human Rights Committee, the official interpretive body of the International Covenant on Civil and Political Rights, which the US ratified in 1992. That committee has emphasized that article 18 of the Covenant, on freedom of religion, “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice,” but—recognizing that religious exercise may affect others—does permit limited restrictions on the freedom to manifest one’s religion or beliefs in actions toward others.

For example, the committee has explained that freedom of thought, conscience, and religion does not protect religiously motivated discrimination against women or racial and religious minorities. Freedom from discrimination is an important human right, and while states can craft accommodations for religious objectors, they should ensure that these are carefully constructed so that they do not come at the expense of the equality or dignity of others. So, in the case of abortion, a government may allow some scope for individual healthcare providers who hold a religious conviction to decline to perform an abortion. Yet, the space for such refusals should be closely and appropriately regulated to protect the rights of women and girls by ensuring that reasonable access to an abortion is available in the vicinity. A right to religious belief shouldn't be used as a tactic to deny access to fundamental health care. The priority should be ensuring seamless and dignified treatment and care without unreasonable barriers. Women and girls should not be forced to travel long distances to access alternative providers, be shamed for seeking care, or experience diminishment in the quality of care.

What the US government does and doesn't do matters. The actions and rhetoric of Washington is felt the world over, with potentially constructive or destructive results for human rights. In Tanzania, when the US and other governments raised concerns regarding a regional official's threat to arrest all the gay men in the capital, Dar es Salaam, the Tanzanian government publicly distanced itself from the official's comments and pledged to uphold international law. The application of human rights sanctions, under an executive order modeled after the US Global Magnitsky law, has also been a welcome step for the promotion of human rights—sending a strong message of disapproval and deterrence to perpetrators of abuse. Conversely, when the US government politicizes those same human rights sanctions, by targeting only lower-level Saudi officials, for example, instead of the senior officials almost certainly responsible for the murder of journalist Jamal Khashoggi, the impunity threatens to outweigh the otherwise positive message of accountability.

In announcing the creation of this commission, the secretary said it would advise on the promotion of human rights in US foreign policy. But it doesn't require months of meetings and testimony to know that as long as the president continues to embrace autocrats and dictators, while expressing envy of their ability to silence or to compromise the democratically essential checks and balances on their authority, such as an independent judiciary, probing journalists, and vigorous activists, the US government will have little credibility. The US government's credibility as a promoter of human rights abroad is further eroded by its human rights abuses at home. This includes the separation of immigrant children from their families and the needless detention of migrants in horrendous conditions; the mass incarceration of millions of people in a US criminal legal system rife with discrimination, arbitrariness, disproportionate and excessive sentencing, often with a lack of due process; the continued indefinite detention of individuals without charge or trial at the Guantanamo Bay detention facility; the failure to hold any US government officials accountable for post-September 11, 2001 torture by the Central Intelligence Agency; and

the denial of health care to individuals because of their lack of insurance, because doctors are gagged by prohibitions related to Title X funding, or because the government has rolled back nondiscrimination protections for LGBT patients, giving providers free rein to discriminate.

Since the inception of the international human rights system, a major problem confronting it has been certain governments' attempts to prioritize some rights over others—something we see rampant today in China, Iran, Russia, and Saudi Arabia, among others. The creation of this commission poses the same threat. The Democracy, Human Rights, and Labor Bureau within this building is already tasked with upholding human rights in US foreign policy. There's no need to duplicate its efforts or to contribute to the selective definition and adherence to rights that is already the preference of governments such as China and Saudi Arabia. Rights become meaningless if governments are free to pick and choose the ones they will respect.

I conclude by noting that one aim of this commission may be found in the secretary's claim that "international institutions remain confused about their respective responsibilities concerning human rights." The reference was left vague, but I fear that, given this administration's withdrawal from the UN Human Rights Council for supposedly criticizing Israel too much, the asserted confusion may be a failure by other governments to fall lockstep into the administration's selective idea of what the enforcement of universal human rights should mean.

It is worth noting that while the administration's withdrawal from the Human Rights Council has contributed to a diminution of the US government's global influence and status as a defender of human rights, the council has remained strong in many areas even without the US presence. For example, for the first time, it condemned Venezuela, in large part because the effort was led by Latin American democracies rather than what Venezuela could have tried to pass off as a US imperialist endeavor. Iceland, which assumed the US seat, led a successful effort to condemn the mass summary executions spawned by the "drug war" of Philippine President Rodrigo Duterte, one of the autocrats whom President Trump has embraced. There have also been important steps taken on Myanmar, Syria, Iran, Burundi, Nicaragua, Yemen, Eritrea, and Belarus, and increasing scrutiny of China's mass abuses in Xinjiang. The reality is that any confusion about human rights rests not so much with international institutions as in this administration's commitment to defend them.

International political institutions are of necessity imperfect because they depend on the ability to secure the agreement of a majority of their members. The US pullout from the Human Rights Council means it is no longer there to stand up to those, like China, Russia, Venezuela, and Cuba, who seek to undermine most efforts to uphold human rights.

International human rights law may not perfectly align with the preferences of any particular government or political party, and it shouldn't. We all would be much worse off if we were to

abandon legal instruments that bind all member states in favor of a selective approach that would reduce human rights from a limitation on governmental action to a take-it-or-leave-it option. The “inalienable rights” of all people would be dangerously compromised.

The US government’s voice is needed on human rights—but it should be a voice that upholds the principled defense of all rights, not a pick-and-choose approach that reinforces the excuses offered by the world’s most abusive governments.