

THE TRUMP ADMINISTRATION'S REMARKS ON UNIVERSAL HEALTH COVERAGE ARE A VIOLATION OF INTERNATIONAL LAW AND A CALL TO ACTION

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Amid the chaos of the unfolding impeachment flurry, the Trump administration signaled a policy change that threatens more concrete injury to the rights and lives of the world's most vulnerable women than the president's forays into corruption. At the United Nations (U.N.) General Assembly high-level meeting on universal health coverage in late September, Alex Azar, the Secretary of Health and Human Services, spoke on behalf of a coalition of U.N. member states to denounce the importance—and even the validity—of sexual and reproductive health and rights.¹

The statement was the culmination of a concentrated effort to recruit a pro-life coalition to urge the U.N. to divert efforts away from abortion and other reproductive services and rights toward “topics that unite rather than divide.”² They argued global resources are better spent on “protecting families” and “unborn life,” and on “real health issues.”³ In doing so, they called on the international body to abandon “ambiguous terms and expressions, such as sexual and reproductive health and rights,” an obvious attack on women's reproductive autonomy.⁴

While the international scaling up of the American religious right's anti-abortion campaign is horrifying, the trend—and its brazenness—is not surprising: this year marks the third that the Administration omitted a discussion of women's rights from the State Department's annual Human Rights Report, and the Administration's reinstatement of the Global Gag Rule continues to affect women's access to health around the globe.⁵ Further horrifying yet predictable is the list of 18 countries that joined the United States' anti-woman message:

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¹ Ariana Eunjung Cha, *U.S. Joins 19 Nations, Including Saudi Arabia and Russia: 'There is No International Right to an Abortion'*, WASH. POST (Sept. 24, 2019), <https://www.washingtonpost.com/health/2019/09/24/us-joins-nations-including-saudi-arabia-russia-there-is-no-international-right-an-abortion/>.

² A letter signed by Alex Azar and Mike Pompeo was sent to 72 countries in late July 2019 asking them to sign on to a joint statement on this subject. The letter as available to the public was confirmed by three separate U.S. officials. Stefano Gennarini, *U.S. Sends Official Pro-Life Message to Foreign Governments*, CENTER FOR FAMILY & HUMAN RIGHTS (August 22, 2019), https://c-fam.org/friday_fax/u-s-sends-official-pro-life-message-to-foreign-governments/; Colum Lynch, *Trump Administration Steps Up War on Reproductive Rights*, FOREIGN POLICY (Sept. 18, 2019, 10:39 AM), <https://foreignpolicy.com/2019/09/18/trump-administration-steps-up-war-on-reproductive-rights/>; Alex M. Azar II, U.S. Sec'y of the Dep't of Health and Human Services, Remarks on Universal Health Coverage, (Sept. 23, 2019), <https://www.hhs.gov/about/leadership/secretary/speeches/2019-speeches/remarks-on-universal-health-coverage.html>.

³ Letter from Michael R. Pompeo, U.S. Sec'y of State, and Alex M. Azar II, U.S. Sec'y of the Dep't of Health and Human Services, to 72 U.N. Member States (July 2019), <https://c-fam.org/wp-content/uploads/Joint-Secretarial-Letter-as-delivered.pdf>.

⁴ Azar, *supra* note 2.

⁵ Amanda Klasing & Elisa Epstein, *US Again Cuts Women from State Department's Human Rights Reports*, HUMAN RIGHTS WATCH (Mar. 13, 2019, 10:23 AM), <https://www.hrw.org/news/2019/03/13/us-again-cuts-women-state-departments-human-rights-reports>. See *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018*, CHANGE 23-60 (June 2018), describing the ongoing detriments of the Global Gag Rule to international aid efforts on issues spanning water sanitation, ZIKA, and gender-based violence among others.

Bahrain, Belarus, Brazil, Democratic Republic of the Congo, Egypt, Guatemala, Haiti, Hungary, Iraq, Libya, Mali, Nigeria, Poland, Russia, Saudi Arabia, Sudan, United Arab Emirates and Yemen. Together, this list includes many of the worst human rights offenders in the world, and particularly some of the worst countries for women.

For example, Yemen and Saudi Arabia remain the only two countries on the globe with no minimum age for marriage—though girls in many of the countries on the list are still subject to child marriage, and thus recurrent rape.⁶ Sudan and Egypt perpetuate the worst rates of female genital mutilation (FGM) against their citizens.⁷ Nigeria ranks among the top five in the world for maternal mortality⁸, and Brazil’s Federal Council of Medicine recently denounced the term “obstetric violence” as “hysteria,” despite the country’s abysmal record of racist and sexist maternal care.⁹

Noticeable among these countries besides their strong anti-woman bent, is that most are still classified as “developing.”¹⁰ This is significant because the right to health as laid out in the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹ takes into account that ensuring all citizens have access to their full right to health takes immense capital and time, which all countries, especially poor and developing nations, cannot be expected to meet immediately.¹² The right to health is thus defined as a progressive right, one that will be measured on states’ behavior rather than immediate outcomes.¹³ In line with state’s positive obligations to work toward this goal, the U.N. has found in Article 2 of the ICESCR a responsibility of developed states to assist their developing peers in realizing the right to health.¹⁴ Unfortunately, the United States signed but never ratified the ICESCR, so the Trump administration is not bound by its provisions (notably, the same is true of the Convention on the Elimination of Discrimination against Women (CEDAW)).¹⁵ Nevertheless, the existence of this

⁶ *Justice for Women: High-level Group Report*, INT’L DEV. LAW ORG. 29 (Mar. 4, 2019), <https://www.idlo.int/sites/default/files/pdfs/publications/Justice%20For%20Women%20Report%20FINAL.pdf>.

⁷ In Egypt, 87.2% of women of reproductive age have gone through FGM as of 2015. In Sudan, the number was 86.6% as of the year prior. FGM is thought to limit a woman’s sexual desire and promiscuity. In actuality, it leads to incredible pain during sex and a variety of other complications. Max Roser, *Human Rights*, OUR WORLD IN DATA, <https://ourworldindata.org/human-rights> (last visited Oct. 4, 2019).

⁸ *Id.*

⁹ Vanessa Barbara, *Latin America Claims to Love Its Mothers. Why Does It Abuse Them?*, N.Y. TIMES (Mar. 11, 2019), <https://www.nytimes.com/2019/03/11/opinion/latin-america-obstetric-violence.html>.

¹⁰ *Country Classifications*, UNITED NATIONS 146 (2014), https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf.

¹¹ The International Covenant on Economic, Social and Cultural Rights is a multi-lateral treaty adopted by U.N. General Assembly Members in 1966. In combination with the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights it makes up what is known as the International Bill of Rights. Karina Weller, *What is the International Covenant on Economic, Social and Cultural Rights*, RIGHTSINFO (Jan. 7, 2019), <https://rightsinfo.org/what-is-the-international-covenant-on-economic-social-and-cultural-rights/>.

¹² *General comment No. 22 (2016) on the right to sexual and reproductive health*, UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL 9 (May 2, 2016),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/22&Lang=en.

¹³ *Id.*

¹⁴ U.N. Secretary General, *Note by the Secretary-General: The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, 7 U.N. Doc. A/61/338 (Sept. 13, 2006).

¹⁵ *Status of Treaties*, UNITED NATIONS TREATY COLLECTION (Oct. 5, 2019 7:15 PM), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#2; *United States Ratification of Human Rights Treaties*, HUMAN RIGHTS WATCH (July 24, 2009 12:24 PM),

generally accepted¹⁶ obligation makes it more of a striking disappointment that the Administration is taking this opportunity to empower the most oppressive governments and to deepen their mistreatment of women, rather than challenging them to meet the higher standards of improving human rights and providing the aid they would otherwise be obligated to under the ICESCR.

In the face of our government denying the existence of these rights and failing to use our position of wealth and power to help developing nations guarantee the rights of their own people, this duty falls to the American people. Though citizens and civic society lack the tools and funding that we would hope our government would put toward improving women's health outcomes in the poorest nations, it is incumbent upon all Americans—and especially white women—who live in the immense privilege of having political voices and their health relatively well ensured, to use other tools of international law and activism to assure that women in every country are treated with dignity and assured their right to health and life. Where our own leaders assist in the oppression and dehumanization of poor, minority, and other disenfranchised women around the globe, American women and our allies must take on the work of condemning and reversing these policies.

As the U.N. General Assembly emphasizes in their 2006 report, *The Right Of Everyone To The Enjoyment Of The Highest Attainable Standard Of Physical And Mental Health*, where member states are actively shunning their duties to respect, protect, and fulfill human rights, “naming and shaming” is one time-proven method for citizens and civil society fighting back.¹⁷ Here, the first step is drawing domestic attention to this underreported move. Then, we must name the tactics the Trump administration is wielding to propagate their dangerous message in order to systematically denounce and dismantle each false and bigoted statement.

Luckily, their tactics this time, as before, are best thwarted by the weight of international consensus and by simply propagating facts. In attempting to turn back the clock on international human rights law, Secretary Azar trotted out many of the same tactics that the Trump administration and generations of legal conservatives have been using to undermine and deny women's rights for decades. The joint statement begins with the sexist but familiar decentering of women's rights in favor of family unity, and a conspicuous failure to acknowledge the concrete issues specific to women's health. The statement then moves on to their main point: “[w]e do not support references to ambiguous terms and expressions, such as sexual and reproductive health and rights... .”¹⁸ These claims of confusion are a blatant muddying of the waters, a tactic the Administration uses frequently when it has no other argument to counter facts

https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#_Convention_on_the.

¹⁶ One hundred and seventy countries have signed on to the ICESCR. The United States is one of four signatories, and the only developed nation, who has not ratified. *See Status of Treaties*, UNITED NATIONS TREATY COLLECTION (Oct. 5, 2019 7:15 PM), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#2.

¹⁷ U.N. Secretary General, *supra* note 11, at 10.

¹⁸ Azar, *supra* note 2.

and widely accepted norms. In fact, “sexual and reproductive health and rights” have been enshrined into international law for several decades.¹⁹

Lastly, they invoked another favorite tactic: reducing all of sexual and reproductive health and rights to abortion. Domestically, this has been an effective tactic in framing the debate by conservative advocates as an all-or-nothing battle over ‘the right to life,’ enabling them to ignore and override manifold and nuanced aspects women’s and family health objectives. American liberals are familiar with how this trope plays out against Planned Parenthood—effectively cutting off poor and disenfranchised communities from access to a broad range of health information and services by making the clinic entirely synonymous with “abortion.” As the Global Gag Rule further illustrates, narrowing the universe of women’s reproductive and sexual health to anti-abortion sentiment creates these same problems, only on a more devastating scale when wielded internationally against the world’s poorest women.²⁰ Because the topic of abortion is such a flash-point, this tactic is the hardest to combat effectively. However, simply naming it—pointing out that this minimizing exists and deliberately and methodically adding gradation to the conversation—goes a long way to diminishing its effectiveness.

Though it is an arduous media battle to fight, the disingenuous problems the Trump administration is attempting to find in the realization of women’s rights in fact have answers. We have facts about the consequences of our actions that support the provision of services, information, and dignity from human rights, political, and economic perspectives. We must wield them to meticulously tear apart their flimsy narrative and, in its place, build up the stories—loudly and repetitively—of the daily experiences of millions of women. We are in a strong position to name and shame the Administration’s bigotry, but it requires the consistent work of ordinary citizens to combat this narrative wherever we see it and re-center the actual needs of the world’s most vulnerable women.

¹⁹ Lucía Berro Pizarossa, *Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in International Human Rights Law*, UNIV. OF GRONINGEN, 5-12 (Aug. 7, 2018), <https://www.mdpi.com/2075-471X/7/3/29>.

²⁰ See *Prescribing Chaos in Global Health*, *supra* note 5.