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Human Rights: A Core Interest in the Current Geopolitical Context

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Summary



On 9 April 2021, the Advisory Council on International Affairs (AIV) received from the Dutch government a request for advice on human rights in a changing world. The basic premise of the request was that the multilateral system, as it has developed since the Second World War, is increasingly under pressure. In the government's view, autocratic tendencies are eroding the multilateral system from within, and this is having a clear impact on human rights.

The request for advice draws attention to several troubling developments. The basic principles enshrined in the Universal Declaration of Human Rights (human dignity, universality, equality/non-discrimination and indivisibility) are being challenged more and more frequently, not only outside the EU but also within it. Due to the rapidly growing influence of autocratically governed states, the preconditions defined by the Netherlands for pursuing an effective international human rights policy, such as space for civil society, cooperation with like-minded partners and the proper functioning of multilateral instruments, are under pressure.

The subject matter of the request for advice is both broad in scope and fundamental in nature. In addition to a range of foreign policy issues, the request raises conceptual issues and questions of principle (for example, concerning a modernised human rights narrative and the connection between different types of rights), as well as matters of an institutional and operational nature (such as how to preserve the international human rights system).

In the present advisory report, the AIV provides a detailed response to the government's request for advice. It is important to note that the world has changed between the submission of the request and the publication of the report. While the conflicts and wars in Syria, the Sahel and Yemen had already led to a dramatic acceleration of the erosion of the human rights system, the Russian invasion of Ukraine in February 2022 has further exacerbated the problem, increasing its urgency and importance. International law, including human rights and humanitarian law, has clearly been trampled, resulting in mass atrocities.

As in other recent conflicts, the war launched by the Russian government has exposed the impotence of international law and the existing human rights system in the face of brutal power politics and ruthless violence. For a country like the Netherlands, it is imperative to take a firm stand against this.

Besides the Russian invasion, there are other factors that threaten or may threaten international law and therefore human rights. The rise of a significant number of autocratic regimes can jeopardise international security, while populist movements, the migration debate, climate change and the threats posed by these phenomena, as well as the negative aspects of social media, undermine the protection of human rights.

In this advisory report, the AIV aims to set out a path – in both conceptual and operational terms – for Dutch human rights policy abroad. To this end, it is important to have a good understanding of how the human rights system came into being and how it has come under pressure in recent decades.

In 1948, three years after the end of the Second World War, the Universal Declaration of Human Rights (UDHR) was adopted. It recognised that fundamental rights and freedoms are inalienable, indivisible and equally applicable to all, and that all human beings are born free and equal in dignity and rights. The UDHR was and remains a fundamental source of inspiration for international and national efforts to promote and protect human rights. More than 80 international human rights treaties and declarations have since followed, as well as regional human rights conventions and

national laws and constitutions. These developments not only provided legal and political inspiration but were also of great moral significance.



However, the human rights system did not develop without a struggle and was certainly not the result of Western efforts alone, as is sometimes claimed. In the 1960s, human rights gained wider acceptance far beyond the corridors of the United Nations and deep within societies around the world. In both Eastern and Western Europe, North America and Latin America, human rights within a relatively short time came to play a crucial role in the social activism and political debate of the 1970s. They also played a key role in the decolonisation process in Africa and Asia. Thanks to the human rights movement, human rights eventually became a force that resonated widely at regional, national and local level.

History reveals the extent to which the relevance of the human rights framework has increased in both scope and reach in recent decades. In the early 1990s, the global movement to promote human rights gained even greater momentum. All UN member states solemnly renewed their commitment to the unity and indivisibility of human rights, and new human rights treaties soon followed.

The strengthening of human rights also gained considerable momentum at regional level, within Europe. In its capacity as a community of values for democracy, the rule of law and human rights, the Council of Europe expanded its membership to include almost all European countries. The European Convention on Human Rights (ECHR) and the EU both developed a wide range of internal and external human rights policies and standards, including the EU Charter of Fundamental Rights.

In addition, the EU imposed more and more conditions relating to human rights as part of its enlargement policy and its wider foreign and trade policy. To a greater or lesser extent, new human rights standards and institutions were also adopted and established in other regions, including by the OSCE, the African Union, the Organization of American States, ASEAN, ECOWAS and the Arab League.



Historical analysis shows that the relevance of the human rights system has increased in recent decades. Although the universality and legitimacy of the ideas in question are a source of constant debate, empirical research demonstrates to what extent – and under what circumstances – human rights make a difference. The AIV believes that the universality of human rights should be the central focus but it cannot be equated with uniformity in the implementation of those rights. For many states, cultural and historical differences have helped shape their varying approaches to human rights. In fact, universality in the sense of universal acceptance of human rights is actually enhanced and promoted when cultural diversity is acknowledged.

Despite all these achievements, the multilateral human rights system is under serious pressure. The beginning of the 21st century was a turning point in this regard. During this period, various events and developments concurred to undermine and erode the multilateral system and the human rights system that had developed over the previous fifty years. These events and developments include 9/11 and the 'war on terror', the success and subsequent stagnation of democratic developments and the resulting pressure on civil society, new geopolitical relations, the impact of globalisation and challenges within the human rights system itself.

After 11 September 2001, the war on terror in Afghanistan and later in Iraq gave rise to practices that were sometimes at odds with international law. As a result, the West in particular was accused of applying double standards. In addition, while pro-democracy movements in the Arab world and elsewhere achieved successes (thanks in part to social media), they also prompted regimes to respond with repression against civil society and human rights defenders. Alongside a rapid rise in China's economic, military and political power and self-assurance, the United States' international

involvement was foundering (a trend which intensified later under President Trump) and the Russian Federation became increasingly repressive. In the midst of these geopolitical developments, the EU proved unable to play a significant enough role to prevent the decline of the human rights acquis.

Furthermore, the wave of neoliberal globalisation, which was initially regarded as having a positive economic and social impact, also turned out to have negative effects. Both externally and beyond doubt internally, the West was increasingly confronted with rising income and wealth inequality at national level, the growing power of multinational corporations, and the intractable misuse of social media by governments, organisations and individuals.

In addition, the human rights system itself faced considerable obstacles: the indivisibility of political, civil, social, economic and cultural rights was not adequately guaranteed and new positive developments, such as the adoption of the Sustainable Development Goals, did not make their human rights component explicit enough. Human rights instruments were further undermined by overextension and insufficient funding, which negatively impacted their effectiveness.

Due in part to these developments, the unanimously accepted principle of the universality of human rights was put in jeopardy, partly because states increasingly expressed reservations about the principle and partly because a growing number of autocratic, repressive states appeared to have little or no interest in the human rights acquis.

Nevertheless, there have also been some positive developments. New and in some cases global non-governmental movements made up of non-traditional actors, often including young participants, are standing up for social justice and human rights. Businesses are taking a more active approach to showing respect for and promoting human rights, on their own initiative or as a result of external pressure. Professional associations and networks are increasingly cooperating at global level to protect human rights. The EU's human rights instruments are becoming stronger and more sophisticated in response to external threats and internal negative tendencies in countries such as Hungary and Poland. Finally, a new approach to human rights has taken hold at national and local level, for example in the form of national human rights institutes.

In contrast to the aforementioned political and social changes and threats, these developments create new opportunities for the realisation of human rights around the world. However, the question is how the Dutch government should take advantage of these opportunities. How can the Netherlands actively promote human rights around the world while also continuing to respect them at national level?

A robust and effective human rights policy requires a strong foreign policy narrative. In this revamped message, human rights are the crucial link between the Netherlands' core values and policy goals at national and international level. Human rights can be more solidly anchored if they are explicitly incorporated into other global policy areas and narratives, such as the Sustainable Development Goals, climate, the environment and migration. Coalitions with like-minded countries and partnerships with civil society within and outside Europe are essential in this regard. The Netherlands must focus on developing new international and EU instruments to protect human rights and tackle human rights violations, such as the human rights clauses in EU trade, partnership and association agreements.

The AIV calls on the government to prioritise human rights. As far as foreign policy is concerned, this requires the Netherlands to take an effective and explicit moral stance in a complex environment characterised by *realpolitik* and tense international relations. A more integrated approach, new partnerships and the provision of an effective counterweight, based on an understanding of the cultural context in other countries, are key building blocks in this regard.

Human rights are not just a worthy ideal but also a clear matter of enlightened self-interest, in that they form a vital link between democracy and the rule of law, on the one hand, and international security, on the other. Idealism need not be shunned, and every effort must be made to preserve the international human rights acquis. In order to achieve this goal, however, a much more pragmatic and realistic approach that recognises today's realities, including shifts in geopolitical relations, is required.

Such an approach has both a foreign and a domestic dimension. In addition to prioritising human rights internationally, the Netherlands also ought to do so at home. This approach requires an appreciation of other viewpoints, but a robust response when internationally accepted, fundamental boundaries are crossed.

Only in this way can the Netherlands more effectively protect and promote human rights as a core interest in a changing constellation of political forces.



Recommendations



summary

Democracy, the rule of law and human rights are currently under serious pressure. This is partly due to shifts in the global balance of power and the rise of autocratic tendencies and regimes. This harsh reality inevitably calls for a different approach to foreign policy, including human rights policy.

A change in approach and strategy is needed.

► Recommendation 1

Defend the preservation of the rule of law, democracy and human rights without reservation.

Like many other countries, the Netherlands has traditionally – and especially since the Second World War – made the protection of fundamental rights and human rights the cornerstone of its own legal order and foreign policy. This happened against the backdrop of the emergence of global and European human rights law. Dutch domestic and foreign policy must continue to defend these historical achievements without restriction and uphold this Dutch tradition. As throughout history, the vitality inherent in our core values – democracy, the rule of law and human rights – provides points of departure for tackling the changing situation and linking it to another set of core values: security, sustainable development and the environment. The AIV advises the government to use the features and characteristics of the changing social environment as an opportunity to establish and propagate these core values.

► Recommendation 2

Continue to place the core principles of human rights as defined at international level – human dignity, universality, equality/non-discrimination and indivisibility – at the heart of foreign policy. These principles also encompass the precepts of freedom and the fight against impunity and corruption.

In the government's view, universality, equality/non-discrimination and indivisibility should be lastingly regarded as the core principles of human rights policy. When it comes to actual policymaking, the AIV suggests extending these core principles to include human dignity, freedom and the fight against impunity. These core principles should form the basis of a long-term, coherent, consistent and recognisable human rights narrative for Dutch domestic and foreign policy. They offer a minimum level of protection and provide a strong and flexible basis for policy, along with scope for particular concentrations, prioritisation and adaptation to time and place. This emphasis on principles also creates opportunities to link up with narratives that reflect and protect the same underlying values in different contexts (see also recommendation 5). Concepts such as the 'human rights of others' and an emphasis on obligations can also play a role in this regard.

► Recommendation 3

Stop distinguishing between different categories of rights.

The government should continue to invest in the widest possible shared vision of human rights. In doing so, it is important to actively convey that all human rights are indivisible and mutually interdependent. Failure to make a strong enough link between civil and political rights and economic, social and cultural rights does not do adequate justice to the interests protected by economic, social and cultural rights, such as education, health and social security. Moreover, rights such as the right to education and the right to vote are inextricably linked. The distinction between the two categories has been superseded by legal developments. However, not all rights are implemented equally quickly or in a similar manner in all situations. The AIV advises the government to endorse whatever approach is supported in each context, for example by civil society or other actors, and to be flexible in this regard. The government should focus on finding ways to ensure that human rights are accepted as widely as possible. In this regard, it should recognise that socioeconomic rights are often deployed in discussions with autocratic and semi-autocratic countries alongside traditional civil and political rights.



► Recommendation 4

Proactively defend and protect the national and international human rights infrastructure. Use the formal and informal checks and balances contained within this infrastructure to increase the effectiveness of human rights over time.

Policy should focus not only on the absence of human rights violations but also on ensuring the existence of an adequate constitutional, political and social infrastructure designed to prevent and remedy such violations. When it comes to multilateral human rights institutions, this means specifically: guarding against attempts by other states to procedurally undermine the independence and effectiveness of the system, securing access to the system by civil society, and guaranteeing adequate long-term funding to support the functioning of this infrastructure, both at the United Nations and within the Council of Europe.

When it comes to national institutions, policy should focus on promoting and supporting institutions that monitor the protection of human rights in every country. This applies both to state institutions (an independent judiciary and effective national human rights institutions) and to social watchdogs – from free media to human rights defenders and human rights organisations, that is, a robust civil society.

► Recommendation 5

Make human rights an explicit part of other global policy areas and narratives, such as the Sustainable Development Goals, climate, the environment, migration and social media. Operationalise human rights policy through a government-wide, cross-sectoral approach and through human rights education.

Incorporating human rights into these policy areas and objectives can enhance their effectiveness and raise their profile; and they, in turn, can help strengthen human rights. Caution is nevertheless required here: these other narratives are often based on more general political objectives and – unlike human rights – do not refer to legal obligations. Human rights should not be supplanted or curtailed through the use of this approach or of soft law instruments. The Netherlands should take due account of this and voice criticism where necessary. It should firmly defend its institutional achievements, for example in the areas of enforcement and monitoring. This calls for a human rights policy that is implemented and supported both at interministerial level and across government, with an explicit focus on human rights education.

► Recommendation 6

Actively build new (and shifting) coalitions with like-minded countries and civil society partnerships – both within and outside Europe – based on shared values and interests.

In order to embed human rights and human rights protection more firmly in the international legal order, it is necessary to invest in new partnerships with like-minded countries and peer-to-peer cooperation with actors other than states. This can strengthen human rights protection. The international community is more diverse than ever. This pluralism can be used to strengthen our human rights policy. The AIV advises the government to seek alliances with countries within and outside the EU and within and outside Europe that have the same values and/or interests as the Netherlands with respect to specific human rights policy objectives.

The government should take advantage of the new opportunities offered by many of today's societies to support and promote bottom-up efforts in the area of human rights and human rights protection. Examples include cooperation and partnerships with local governments, NGOs, businesses, national human rights institutes, trade unions, and peer-to-peer cooperation with networks of professionals such as judges, doctors, journalists, human rights cities, religious and other belief-related organisations, etc.

► Recommendation 7

Use and promote new international and EU instruments to protect human rights and sanction or otherwise address human rights violations.

The government has various instruments at its disposal, including national and EU ‘Magnitsky’ legislation, the new emphasis on the rule of law (as exemplified by the Commission’s new Rule of Law reports), the enhanced mandate of the EU Fundamental Rights Agency (FRA), the EU Action Plan on Human Rights and Democracy 2020-2024 and national human rights institutes. Other options include making more active use of the human rights clauses in EU trade, partnership and association agreements. The AIV advises the government to nurture the Council of Europe and work more actively within it to strengthen the role of the Committee of Ministers in the execution of judgments of the European Court of Human Rights, including the use of the infringement procedure under Article 46, paragraph 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Human rights are increasingly enforced by legal means, and human rights violations are increasingly sanctioned in practice. Strategic litigation plays a key role in this regard. A Dutch example of this is the Urgenda case. Under this approach, the human rights perspective strengthens the fight against perceived injustice and provides specific instruments and standards to tackle it. The AIV advises the government to take advantage of this legal potential and strengthen the relevant infrastructure. This could also apply to issues that have traditionally not been viewed in terms of human rights, such as problems relating to gas extraction in the Dutch province of Groningen.

► Recommendation 8

Approach relations with autocratic states from a position of principle but also dare to be pragmatic: persist with dialogue while supporting anti-authoritarian movements.

Where necessary, be prepared to selectively deploy measures which may be transactional such as economic, political and cultural restrictions and sanctions, with a preference for specific, targeted measures.

The human rights narrative of autocratic states, or the lack thereof, differs so substantially from that of the Netherlands that it will often be difficult to reach agreement or achieve results on the basis of a rational dialogue. At this juncture, the use of other, more transactional measures should therefore not be shunned, with a definite preference for specific, targeted measures over a ‘quid pro quo’ approach. However, in cases where autocratic states genuinely respond in a positive and meaningful manner, the AIV advises the government to be prepared to offer certain, often limited forms of cooperation and support. At the same time, it remains important to pursue dialogue based on the concept of the ‘human rights of others’ and to continue supporting opposition movements in word and deed.

► Recommendation 9

Acknowledge that there are shortcomings in the observance of human rights in the Netherlands and in the West.

The government should bear in mind that there is a wide range of forms of government and of perspectives on human rights. The AIV thus advises the government to spread the message that promoting human rights contributes to both national and international stability and security and stable economic development. With a view to conveying this message, the Netherlands should actively promote human rights education.

The AIV advises the government to acknowledge shortcomings in the observance of human rights in the West and particularly in the Netherlands when promoting human rights as part of Dutch foreign policy. Do not trivialise the Netherlands’ own human rights problems, such as the recent childcare



benefits affair. Instead, address them vigorously and avoid double standards. In doing so, emphasise that in the Netherlands (and in many other countries) the existence of a constitutional, political and social infrastructure contributes to the prevention, exposure and rectification of problems and violations. In addition, highlight the importance of human rights for national and international stability and security and stable economic development. After all, the international environmental and social agendas do not have to conflict with other social interests.



► Recommendation 10

Enhance capacity and knowledge in the field of human rights within government, including the Ministry of Foreign Affairs and the mission network.

In particular, the government should invest in knowledge of how human rights have developed at local level and the role of the state and other actors in the creation of the existing international human rights system.

The challenges and the pathways to solutions outlined in this advisory report call for a much broader knowledge base in the field of human rights to effectively counter the discourse and policies emerging from states that seek to erode or downplay the importance of these rights. There is also a need for more structural cooperation between human rights specialists and those responsible for formulating EU, security and economic policy. A commitment to enhancing institutional memory and expertise requires more capacity and staffing than currently available.

In order to implement the above recommendations, the government needs to deepen its understanding of these issues and enhance its focus on them. In addition, it needs to establish a solid knowledge base so that it can develop a new discourse and discard the outdated contradictions of the old discourse. The knowledge base can be expanded through closer cooperation with the Legal Affairs Department and with other ministries and by creating a permanent platform for knowledge exchanges on human rights for policy officers at all stages of their careers.





Human rights and geopolitics

► 1.1 Introduction

On 9 April 2021, the Advisory Council on International Affairs (AIV) received from the Dutch government a request for advice entitled ‘Human rights in a changing world: preconditions for an effective policy and a new narrative’¹. The basic premise of the request was that the multilateral system, as it has developed since the Second World War, is increasingly under pressure. In the government’s view, autocratic states are eroding the multilateral system from within, and this is having a clear impact on human rights.

The request for advice draws attention to several troubling developments. The basic principles enshrined in the Universal Declaration of Human Rights (human dignity, universality, equality/non-discrimination and indivisibility) are being challenged more and more frequently, not only outside the EU but also within it. Moreover, due to the rapidly growing influence of autocratically governed states, the preconditions defined by the Netherlands for pursuing an effective international human rights policy, such as space for civil society, cooperation with like-minded partners and the proper functioning of multilateral instruments, are under pressure.

Against this backdrop, the government asked the AIV how the ongoing relevance of the international human rights system can be ensured and how the growing, adverse influence of autocratic states on the human rights system can be countered. In addition, the government asked whether a modernised human rights narrative can be developed that responds to autocratic tendencies to cast doubt on the basic principles of human rights and focus mainly on social and economic rights, and whether such a narrative could also be used to enhance public support for human rights domestically and abroad.

Finally, the government asked how we can ensure that civil and political rights continue to receive sufficient attention in the multilateral human rights system and how we can guarantee the preconditions for an effective human rights policy. In all of this, the government noted, the three basic principles of human rights – universality, equality/non-discrimination and indivisibility – must remain paramount.

► 1.2 Approach and objective of the advisory report

The subject matter of the request for advice is both broad in scope and fundamental in nature. The request covers a broad spectrum of foreign policy issues, ranging from political and economic security, development issues and trade promotion to European cooperation, transatlantic relations and relations with countries such as China and Russia. In addition, the request not only raises conceptual issues and questions of principle (such as the need for a modernised human rights narrative and the connection between different types of rights) but also matters of an institutional and operational nature (such as how to preserve the international human rights system, how the Netherlands can provide a counterweight to autocratic states and how to guarantee the preconditions for an effective human rights policy). At the same time, the request is based on a number of

assumptions (for example concerning the distinction between social and economic rights and civil and political rights and the role of autocratic states) that need to be clarified.



The issues raised in the request for advice have become increasingly urgent since the Russian invasion of Ukraine in February 2022. The world changed between the submission of the request and the publication of this report. International law, including human rights and humanitarian law, has clearly been trampled, resulting in mass atrocities.

As in other recent – and in most cases internal – conflicts, the war launched by Russia has exposed the impotence of international law and the existing human rights system in the face of brutal power politics and ruthless violence. In addition, it has shown how vital it is for a country like the Netherlands to take a firm stand against this. The government emphasised this in a policy letter on foreign affairs of 8 March 2022, in which it states: ‘Due to the increasing pressure on democratic freedoms, the government will place even greater emphasis on the protection of human rights. In addition to intensifying its efforts in the fight against impunity, it is devoting particular attention to democratic values and the proper functioning of the international legal order.’²

For the reasons outlined above, the AIV decided to prepare an advisory report that sets out a path – in both conceptual and operational terms – for Dutch human rights policy abroad. The AIV believes that an analysis and interpretation of the developments that have led to the current situation is indispensable for this purpose. A good understanding of how the human rights system came into being and how it has come under pressure in recent decades is key to providing a comprehensive and realistic overview of the Netherlands’ current perspectives for action. This need for clarification and ‘instruments’ for operating effectively within the current, complex constellation of forces also emerged in the discussions conducted by the AIV.

► 1.3 Structure of the report

The advisory report is divided into three parts. In the first part, the AIV examines how the multilateral human rights system has developed since the Second World War (chapter 2). In the process, it devotes attention to the underlying narrative and principles. The report also shows how much the system’s scope and reach have increased over time and under what conditions human rights actually made a difference.

The second part of the advisory report (chapter 3) analyses the increasing pressure to which the international human rights system has been exposed since the beginning of the 21st century, in the light of changing geopolitical relations. This part also discusses global developments that are creating new opportunities for the realisation of human rights.

In the third part (chapter 4), the AIV discusses the Netherlands’ perspectives for action and presents conceptual and operational pathways for Dutch human rights policy based on the previous two parts. This part also forms the basis for the AIV’s recommendations and its responses to the questions in the government’s request for advice.



The multilateral human rights system since the Second World War

▶ 2.1 Origins, development and narrative

The multilateral human rights system as we know it today has its origins in developments that were set in motion during and immediately after the Second World War. However, the current, comprehensive system of global and regional human rights organisations, treaties and monitoring bodies is by no means the result of a linear process. It was not necessarily the result of ideologically driven Western states that were keen to expand and develop the system of international human rights law in order to export their norms and values to other continents. On the contrary, the system that has evolved over the past eight decades has from the outset been – and still is – shaped in part by power politics, in which the interests of the major powers and those of colonial and post-colonial developing countries have both played a role.

The resulting conflicts of power and interests often resulted in slow progress and hard-won compromises, in which social movements, civil society organisations and public opinion often played a decisive, progressive role. For example, during the founding conference of the United Nations in San Francisco in 1945, the human rights passages in the UN Charter were expanded considerably, thanks in part to intense lobbying by US civil society organisations in particular.³ Nevertheless, these passages remained weak in comparison to those setting out the principles of state sovereignty and non-intervention, which formed the two main pillars of the Charter. Moreover, hardly any provision was made for monitoring or enforcement mechanisms to hold states accountable for complying with the human rights passages.

In 1948, three years after the end of the Second World War, the Universal Declaration of Human Rights (UDHR) recognised that fundamental rights and freedoms are inalienable, indivisible and equally applicable to all, and that all human beings are born free and equal in dignity and rights. The UDHR has been and remains a fundamental source of inspiration for the international and national efforts made since the late 1940s to promote and protect human rights. In addition to the UDHR, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the UN General Assembly in 1948, and the Geneva Conventions of 1949 were adopted shortly thereafter.

The UDHR inspired more than 80 international human rights treaties and declarations, as well as a significant number of regional human rights conventions and national laws and constitutions. Perhaps even more important than this effect is the inspirational power of human rights, which for many people has a moral and spiritual significance that goes beyond the legal and political effects. However, it would be wrong to assume that the development of the international human rights system was solely the result of the sustained efforts of the Western powers.

For example, the first global human rights treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), was adopted in 1965 as a result of the efforts of many

developing countries that had recently gained independence. For many of these countries, the recognition of (equal) rights had also played a key role in their struggle for independence. A year later, in 1966, after decades of arduous negotiations, two general, legally binding instruments that would form the pillars of an increasingly comprehensive system of human rights treaties and declarations were adopted: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 1967, a protocol was added to the 1951 Refugee Convention that extended its protection to refugees across the globe. The development of international monitoring and enforcement mechanisms did not get underway until the end of the 1960s. Civil society organisations played a key role in advocating and fighting for every step that was taken.⁴

During this period, human rights began to gain wider acceptance far beyond the corridors of the United Nations and deep within societies around the world. In Eastern and Western Europe, North America and Latin America, within a relatively short time human rights came to play a crucial role in the social activism and political debate of the 1970s.⁵ Thanks to the human rights movement, human rights eventually became a force that resonated widely at regional, national and local level. Victims of human rights violations increasingly found their way to international supervisory bodies such as the European Court of Human Rights and its Inter-American and African counterparts. The rulings of these courts, in turn, had a positive impact on human rights awareness in the states under their jurisdiction.

Following the end of the Cold War at the beginning of the 1990s, the global movement to promote human rights gained even greater momentum. All UN member states solemnly renewed their commitment to the unity and indivisibility of human rights at the World Conference on Human Rights in Vienna in 1993, where they also called for the creation of the post of the United Nations High Commissioner for Human Rights. New human rights treaties were negotiated in the decades that followed, such as the Convention on the Rights of Persons with Disabilities (CRPD). As before, this was often the result of sustained pressure from civil society organisations and other stakeholders.

The strengthening of human rights also gained considerable momentum at regional level, within Europe. In its capacity as a community of values for democracy, the rule of law and human rights, the Council of Europe expanded its membership to include almost all European countries. The European Convention on Human Rights (ECHR), which for decades has been the most important and most invoked human rights treaty within Dutch legal practice, thus became a catalogue of minimum human rights standards that enabled individual countries to offer – or continue to offer – more far-reaching protection. Every year, tens of thousands of human rights victims find their way to the European Court of Human Rights (ECtHR), which became a permanent, full-time institution in 1998. Due to its relatively robust oversight mechanism, which encompasses judgments that are binding on states and enforcement through the Council of Europe’s Committee of Ministers, it is regarded as the most effective human rights system in the world. Moreover, in substantive terms the Court’s case law is a comprehensive human rights *acquis* that has also served to inspire other regions.

The EU also developed a wide range of internal and external human rights policies and standards, including the EU Charter of Fundamental Rights, which is based in part on the ECHR, and the establishment of the EU Fundamental Rights Agency (FRA). In addition, the EU imposed more and more conditions relating to human rights as part of its enlargement policy and its wider foreign and trade policy (conditionality). Although not always applied consistently or coherently, these conditions played a crucial role in reinforcing standards and enhancing the discourse in the field of human rights. In parallel, new member states joined the Council of Europe, and the European Court of Human Rights became a permanent, full-time court to which victims of human rights violations found their way in huge numbers. Both this court and the Court of Justice of the European Union developed extensive, innovative and strong case law in the field of human rights. To a greater or lesser

extent, new human rights standards and institutions were also established in other regions, including by the OSCE, the African Union, ASEAN, ECOWAS and the Arab League, albeit with varying degrees of success and effectiveness.



At national level, many countries integrated human rights into their constitutions and policies. Constitutional and other high courts issued important and internationally authoritative rulings in this area, which sometimes resulted in human rights becoming part of a country's national constitutional culture. A number of countries began to develop action plans relating to general or issue-specific human rights, and incorporated human rights into primary, secondary and university education. Human rights also featured increasingly in the training of professionals, from police officers to judges.⁶ Most strikingly, there has been a huge increase in the number of national human rights institutions, including the Netherlands Institute for Human Rights, in the three decades since the adoption of the Paris Principles at the beginning of the 1990s.⁷ In all these ways, awareness has grown – including in the Netherlands – that human rights actually begin in small places, close to home, as Eleanor Roosevelt once said.

At global level, the prohibition of grave human rights violations was increasingly codified in international civil and criminal law, and there was a growing awareness that the protection of these rights was not just the responsibility of the state concerned but of the international community as a whole, as embodied by the UN. The Responsibility to Protect (R2P) principle, adopted by heads of state and government at the UN World Summit in 2005, explicitly states that the international community has a complementary responsibility to help protect populations against large-scale violations of human rights and that it can under certain conditions intervene on the basis of Chapter VII of the UN Charter.⁸ The acknowledgement by heads of state and government that the international community (UN) shares the responsibility for the protection against large-scale violations of human rights and that it should act accordingly was widely regarded as the most significant aspect of R2P, casting the principle of non-intervention in a new light.⁹

As a result, the traditional principle of sovereignty, which was one of the original pillars of the UN Charter, gradually lost relevance. By the end of the 20th century, international organisations – in particular the UN – had increasingly become a legitimate source of authority for promoting and protecting human rights, a task that in the 1940s was still regarded as falling within the exclusive domain of the nation state. This change was directly related to the balance of power in the 1990s, a period in which the EU experienced only limited pressure from more populist governments and movements, China was not yet the military, political and economic superpower it is today, Russia was looking for a new position on the world stage following the collapse of the Soviet Union, former Eastern Bloc countries were joining the EU and NATO, and the US had the latitude to widely promote Western, capitalist liberalism. All of this has changed dramatically in the two decades since the turn of the millennium, thereby reigniting the debate on the legitimacy and universality of human rights.

▶ 2.2 Legitimacy and universality

Historically, the universality and legitimacy of human rights have not always been regarded as self-evident and have often sparked considerable debate. In 2008, the AIV published an advisory report on the universality of human rights.¹⁰ The kind of questions that were being discussed at the time focused mainly on the role of cultural and religious considerations in the protection and promotion of human rights. A key premise of that report was that the universality of the importance and applicability of human rights cannot be equated with uniformity in their implementation.

In the report, the AIV argued that universality, in the sense of the universal acceptance of human

rights, is reinforced and enhanced when cultural diversity is acknowledged. After all, universality does not mean the absence of differences in culture or tradition. On the contrary, it would be a form of Western condescension to pretend that people from other cultures care less about not being subjected to torture or receiving a good education. For many states, however, cultural and historical differences play a key role in determining their specific approach and priorities when it comes to human rights.

Attaching the proper weight to such historical or cultural conditioning in foreign policy does not have to result in the subordination of certain human rights, as autocratic rulers like to suggest, but may lead to different pathways to the realisation of human rights. Similarly, such an approach does not have to lead to cultural relativism, although it does recognise that human rights, rather than being static, are amenable to regional and local interpretation (also known as ‘vernacularisation’).¹¹ By recognising and embracing this flexibility in our foreign policy, we will be better placed to connect with different cultures, traditions and articulations when promoting policy and engaging with other states and societies. In this context, culture should not be regarded as being incompatible with human rights, but rather as being closely linked to such rights. Human rights and cultural diversity can mutually reinforce each other.¹²

At this particular moment in time, it is not just the way in which human rights are implemented at national or local level that raises questions. The very ideas that the human rights narrative embodies are also increasingly being challenged. A recurring point of criticism is that human rights are fundamentally a Western phenomenon that has flourished during a period of Western dominance and is strongly linked to the Western liberal state model.

Two observations can be made here. First, it is by no means clear that human rights automatically protect the interests of Western countries simply because of their origins. In the 1950s, for example, the Netherlands also had issues with the principle of equality in the Universal Declaration of Human Rights (which was at odds with the way in which women were dismissed from employment after marriage) and freedom of religion as enshrined in the European Convention on Human Rights (which conflicted with the ban on Catholic processions).¹³

In addition, this criticism ignores the nature and substance of the Universal Declaration and the contributions made to the human rights system from the outset by the non-Western world. In addition, it does not take account of the way in which human rights have been embraced worldwide. For example, representatives of non-Western countries played a crucial role in the adoption of the UDHR, and it was precisely these countries that sought to further codify and protect human rights during the Cold War, for example by means of regional conventions and instruments.¹⁴

While European colonial powers sometimes blocked the international protection of human rights rather than promoting it, in order to prevent the disintegration of their colonial systems, states in the Global South frequently took charge of the human rights discourse, and in many cases advanced it.¹⁵ In later years, too, ‘developing countries’ often initiated and supported negotiations on human rights treaties. Examples of this include the draft treaty on business and human rights, which is currently being negotiated, and the Convention on the Rights of Migrant Workers, which was adopted in 1990. In addition, as previously mentioned, civil society has often played – and continues to play – a crucial role in the drafting of human rights treaties at national and international level.

► 2.3 Conflicting world views: four schools of thought

In recent years, the debate on the universality of human rights has intensified. States have distinct views on this issue, each emphasising different, occasionally conflicting aspects of the human rights

doctrine. In this regard, the AIV distinguishes between four schools of thought.



The first school of thought encompasses the view that prevails in the West (and in the Netherlands). This thinking, which is often wrongly described as exclusively ‘Western’, focuses on individual freedom and civil and political rights. It is indicative of a particular prioritisation that is reflected in the rights enumerated in the UDHR and also appears to inform, for example, the government’s request for advice (see annexe I): human dignity, universality, equality/non-discrimination and indivisibility.

The second school of thought is currently actively propagated by China, which regards human rights primarily as an integral part of state-led socioeconomic emancipation programmes, development and political centralism. People’s rights are guaranteed and respected, provided they contribute to the state’s goals.¹⁶ These goals are always paramount: whether the issue is privacy, freedom of expression, the right to demonstrate, freedom of religion or the roll-out of socioeconomic emancipation programmes through the Belt and Road Initiative, the Chinese state always sets clear boundaries. China’s current interpretation – and enforcement – of human rights goes hand in hand with an ever-increasing limitation of those rights.

The Chinese approach also has a clear geopolitical dimension. China has set up its own human rights council, which is meant to serve as a substitute for the international courts. Although many internationally agreed rights have been incorporated into Chinese law, human rights are given an explicitly Chinese interpretation, and in practice citizens will be unable to defend their rights outside the Chinese judicial system and thus beyond the reach of the Chinese state.¹⁷ In this way, China undermines the functioning of the multilateral bodies that have been established in recent decades. Because Chinese human rights policy is based on such a different approach, there will always be a huge gap between China and Europe on this issue.

The third school of thought is propagated mainly by Islamic states from the Middle East. It builds on the 1990 Cairo Declaration on Human Rights in Islam (CDHRI), in which 45 Muslim Arab countries stated that their interpretation of human rights – based on the original ideas enshrined in Sharia law – was no longer compatible with the Universal Declaration of Human Rights.¹⁸ They placed a stronger emphasis on Islamic values and ethics, which included restrictive conditions relating to women’s rights, religious freedom and equality. While the same countries signed the Vienna Declaration on the Universality of Human Rights in 1993, this debate still continues to this day.

In addition, there is a fourth school of thought that prioritises duties over rights and places responsibility to the community above individual freedom. For example, the African Charter on Human and Peoples’ Rights is much more explicit on the subject of responsibilities than other regional treaties.

All these schools of thought claim to have a basis in the human rights doctrine. As a result, in addition to promoting dialogue, they mostly lead to fierce international debate and discord. However, this reference to the human rights doctrine also creates opportunities to build bridges. In terms of the emphasis on duties, for example, reference can be made to Article 29, paragraph 1 of the UDHR, which states: ‘Everyone has duties to the community in which alone the free and full development of his personality is possible.’¹⁹ There is also scope for mutual understanding in the recognition that religious freedom is a fundamental right, as laid down in Article 18 of the UDHR and other treaties. Nevertheless, when emphasising these similarities, it is important to defend the universality envisaged in the Universal Declaration – both in principle and in its entirety – in the context of the human rights dialogue. The current institutional human rights framework offers ample opportunities for such a dialogue, for example through the Universal Periodic Review (UPR) process and other forms of monitoring.



The Netherlands must obviously also be receptive to criticism. In recent years, our country has faced considerable criticism at the UN in connection with the childcare benefits affair, the debate regarding the Zwarte Piet (Black Pete) tradition, the Calvinist Party's position on women's rights, refugee policy, subversive drug crime, the battle over privacy laws, the poor record of information management in the public sector, and discrimination. It is important to take this criticism to heart.

In this time of geopolitical tension and national and international culture wars, it is essential that the 'place where bridges are built between peoples', as Eleanor Roosevelt once called the UN, continues to exist. The language in which countries come together is the language of human rights. The way in which some states or government leaders now unilaterally withdraw from declarations previously adopted within the UN or other frameworks or distance themselves from international human rights agreements and treaties to which they previously acceded is therefore concerning. For example, Russia had already threatened to withdraw from the Council of Europe and thus from the ECHR before the Committee of Ministers expelled it from the organisation in March 2022. There are also a few examples of countries that have withdrawn from other regional human rights systems. For instance, Trinidad and Tobago stopped recognising the jurisdiction of the Inter-American Court of Human Rights in 1998 and Venezuela's withdrawal from the Court went into effect in 2013.

In Africa, four (out of ten) countries – Benin, Côte d'Ivoire, Tanzania and Rwanda – have withdrawn their declarations recognising the individual right of petition to the African Court of Human and Peoples' Rights since 2016.²⁰ The argument on which they relied was that the fundamental rights and freedoms enshrined in the UDHR – and elaborated in the multilateral human rights system – lacked universality and were based, at their core, on a uniquely Western idea that had gradually been imposed on other parts of the world. However, this argument does not hold up in the light of objective historical analysis.

▶ 2.4 Relevance and effectiveness

The relevance of the human rights system in relation to national and international issues has steadily increased since the Second World War. A growing number of social, economic and political issues are now labelled as 'human rights issues'.²¹

In response to this expansion of the concept of human rights, researchers are increasingly focusing on its effectiveness. In this context, however, the debate about whether human rights make a difference has become 'stale', in the words of Shaffer and Ginsburg.²² For example, on the basis of global quantitative and qualitative research, Simmons has shown that treaty ratification leads to stronger human rights protection.²³ What truly matters, including when it comes to formulating policy recommendations, is understanding under what conditions and in what way human rights actually make a difference.

For this purpose, it is important to identify the relevant *mechanisms*, *actors* and *pathways*.²⁴ The *mechanisms* in question – the shift in values, norms or interests – can be legal or symbolic as well as power-based, informational or cooperative. When a treaty is incorporated into national law, is regularly cited in policy discussions or leads to new coalitions, it will be more effective. This increases the importance of treaty monitoring – the process whereby countries hold each other to account, for example in a UN framework, for their compliance with human rights treaties, such as the Convention on the Rights of the Child. Due to its expanding workload, however, the UN is finding it increasingly difficult to ensure that such monitoring takes place.²⁵

Strategic litigation and working with indicators are also effective ways of progressing from ratification to actual results.²⁶ In addition, the Human Rights Council's Universal Periodic Review (UPR) process,

which periodically assesses the human rights policies of all UN member states, helps ensure that countries comply or continue to comply with human rights as much as possible.



Actors play a crucial role in the mobilisation of human rights, starting with civil society in the country concerned. Sikkink describes how the interplay between local and international actors can force states into compliance, especially when it embraces local concerns, resulting in a human rights cascade.²⁷ In such situations, the flow of funding to civil society organisations can play a key role in determining which issues make it on to the agenda.²⁸ Nevertheless, other actors, such as individual human rights defenders, businesses, churches, the media, local authorities and – in a different capacity – the judiciary and lawyers, also play a key role in human rights implementation, in which coalitions of actors are particularly effective.²⁹

Insight into the *pathways* that lead to the realisation of human rights – for example how a treaty concluded in New York can make a difference in a person's life – requires knowledge of the specific, cultural and local context. The more human rights are aligned with the language, culture and customs of this context ('vernacularisation'), the greater the chance that they will have impact.³⁰ In this regard, there is an important role for 'translators' – people who are familiar with the local context and the world and language of human rights.

The continuous expansion of the concept of human rights nevertheless raises certain questions. In recent years, for example, the UN has adopted separate conventions to emphasise that the general rights under the UDHR also apply to women, children, migrants and – most recently – people with disabilities. Ongoing discussions concerning the adoption of special treaties on older persons or farmers rightly raise the question whether these thematic instruments add anything to the legal protection of those groups. There is no simple answer to this question.

The formulation of a new treaty sometimes gives rise to new coalitions between national and international actors, as well as to a shift in the discourse ('women's rights are human rights') that within a given context can make a big difference for vulnerable groups that may have been formally covered by a treaty in the past but noticed little of this protection in practice.³¹ On the other hand, this increase in relevance has resulted in a trend whereby minor issues are increasingly labelled as 'human rights violations' – often solely on the basis of a perceived right to unlimited individual freedom in which rights and duties are no longer properly balanced. At their core, however, human rights are articulated in a social context. In the words of former government minister and legal scholar Ernst Hirsch Ballin, human rights are supposed to be rights that we share with fellow human beings, not 'ego rights'.³²

In conclusion, this overview shows how much the relevance of the human rights framework has increased in recent decades. Although the universality and legitimacy of the human rights doctrine are a source of ongoing debate, empirical research shows how much – and under what circumstances – human rights make a difference. Despite these achievements, the multilateral human rights system is under increasing pressure, as discussed in the next chapter.

The multilateral human rights system under pressure

▶ 3.1 Weakening of the system in the 21st century

The end of the Cold War ushered in the heyday of multilateralism in the 1990s. Francis Fukuyama described the *zeitgeist* of this period in his 1989 essay ‘The End of History?’, in which he wrote: ‘What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind’s ideological evolution and the universalization of Western liberal democracy as the final form of human government.’³³ At the same time, the global balance shifted from an emphasis on state sovereignty to a shared global responsibility for the realisation of human rights, exemplified by such concepts as the aforementioned Responsibility to Protect.³⁴

However, the beginning of the 21st century was a turning point. During this period, various concurrent events and developments undermined and ‘eroded’ the multilateral system and the human rights system that had developed over the previous fifty years. These events and developments included 9/11 and the ‘war on terror’, the success and subsequent stagnation of pro-democracy movements and the resulting pressure on civil society, new geopolitical relations, the impact of globalisation and challenges within the human rights system itself.

The attacks of 11 September 2001 belied the idea that Western liberal democracy would ultimately prevail across the globe. They appeared to stem from an abhorrence within radicalised Islamic circles towards the West, especially the US, and the Western-led world order – an abhorrence that also existed elsewhere. In the years following 9/11, the US, together with NATO, mounted two large-scale foreign interventions in Afghanistan and Iraq, although the UN Security Council never authorised the second one. In the end, both interventions were defended as just, on the grounds that they also sought to promote democracy. As political interventions, however, their primary purpose was to nip potential economic and political threats to the West in the bud.

Over a period that would end up lasting many years, these interventions claimed large numbers of victims and helped fuel the rise in the Middle East of the violent terrorist movement IS. In addition, under the guise of the ‘war on terror’, practices were developed and deployed that were at odds with international law, especially in the field of human rights. Over the years, these practices also significantly eroded the credibility of the global human rights system, and particularly the credibility of the West as the advocate of this system, both directly and indirectly. In addition, the West was – often rightly – accused of applying double standards in practice based on its own interests.

From a realist political perspective, it is clear that a great deal of tension can exist between the multilateral human rights system, on the one hand, and geopolitical power politics, on the other. For example, with a few controversial exceptions, R2P has largely remained a dead letter. In the face of military conflicts or vital economic interests, it appears that human rights agreements are often the

first to be broken. In the AIV's view, a purely ideological-moral approach to human rights is therefore no longer sufficient. Anyone who approaches human rights from a purely idealistic perspective does not take adequate account of the power-political motives of many contemporary leaders. Awareness of this power-political dimension is vital to the long-term defence of the human rights system.



The clash between human rights and power politics has intensified over the past two decades. It also manifested itself in the global protest movements that emerged during this period, which sometimes led to democratic uprisings but more often resulted in setbacks or renewed oppression. Precisely because they were initially successful in some cases, the 'colour revolutions' in the former Soviet republics and the Arab Spring uprisings triggered a particularly repressive response in many of the affected states, as well as in neighbouring countries, which severely restricted and/or violated human rights in a variety of ways, either preventively or otherwise.

These violations have been putting the space of civil society under severe pressure for almost two decades. In some countries, this space has all but disappeared. In many states, the pressure manifests itself in restrictive legislation and policies (e.g. anti-NGO legislation), a negative discourse concerning defenders of democracy and human rights (who are branded traitors or Western pawns) and severe coercion in practice through intimidation or the threat or use of violence. Movements, organisations and individuals that stand up for the protection of human rights are targeted in particular. Both human rights NGOs and human rights defenders are under severe pressure in many countries.

Organisations are regularly banned, and human rights defenders are subjected to intimidation, unjustly arrested or even murdered. The same applies to journalists who expose abuses. It is no wonder that the topic of 'human rights defenders' has featured prominently in Dutch foreign policy for many years.³⁵ Given the aforementioned key role these actors have played and continue to play in the realisation and implementation of human rights, this development has had a direct and negative impact on the protection and effectiveness of those rights, both nationally and internationally.



More broadly, the fact that a growing number of countries are putting pressure on counterforces that are willing to challenge the executive branch, including other watchdogs of democracy and the rule of law, from journalists to ombudspersons and an independent judiciary, is having a dangerously erosive effect on the protection of human rights. This is because effective protection at global and European level is heavily dependent on such watchdogs: they provide the multilateral system with information and evidence and also play a crucial role in promoting the enforcement of rulings of international human rights bodies. More importantly, all these national actors – from human rights defenders and lawyers to the courts – are often the first access point for citizens seeking to expose abuses and obtain justice.

US historian Samuel Moyn has identified another challenge of the human rights system. In his influential work *Not Enough: Human Rights in an Unequal World*, he argues that the strong emphasis on civil and political rights at the expense of social and economic rights means that the human rights system is doing too little to address the widening gap between rich and poor.³⁶

► 3.2 Shifting relations and globalisation

The weakening of the human rights system is also linked to fundamental changes in the global balance of power in the first decades of the 21st century. These changes had a profound impact on the approach to human rights and values such as freedom and democracy. The rapid and spectacular rise in China's economic, military and political power led to an equally rapid rise in the country's self-assurance. With increasing confidence, China began to propagate its own policies, priorities and ideology, including in the field of human rights and freedoms. At the same time, the political rise of

Vladimir Putin was taking place in Russia. Putin's protracted rule, which over time was characterised by mounting internal repression and increasingly assertive foreign policy aspirations motivated by a revanchist view on the collapse of the Soviet Union, ultimately led to Russia's annexation of Crimea in 2014 and the invasion of Ukraine in 2022. Clearly, the protection of human rights is closely linked to geopolitics.

China's rise was paralleled by a weakening of the US position, which had dominated the global order since the end of the Second World War. This process was accelerated by the Trump administration's isolationist and populist policies, which were characterised by an emphasis on 'America first' and the country's withdrawal from international agreements and multilateral organisations (including the UN Human Rights Council). The EU, in turn, was largely unable to independently fill the vacuum created by the disappearance of the United States' leading role in that phase and prevent the erosion of the human rights acquis. Contributory factors included shortcomings in compliance with human rights standards within the member states themselves, cumbersome internal procedures and increasing disagreement between member states on fundamental democratic and constitutional European values.

A fourth key factor in the weakening of the human rights system (besides the war on terror, the impact of pro-democracy movements and shifting geopolitical relations) is the impact of globalisation, which has expanded rapidly since the end of the twentieth century. In many respects, the effects of globalisation have been positive. Acclaimed writers such as Kishore Mahbubani even argue that, objectively speaking, the world has never been better than it is today. He notes: 'Although populations in the West have recently fallen into pessimism, the rest of the world has witnessed the dawn of a new era.'³⁷ At the same time, the fact that China – with a potential labour force of almost a billion people – has been part of the global trading system since 2001 has had an impact on Western labour markets and has in many cases resulted in actual or perceived job losses. In most European countries, the labour force has also been adversely affected by globalisation and the associated effects of the neoliberal market economy, while income and wealth inequality have increased significantly at national level.

A key consequence of the above developments is that the realisation of economic, social and cultural rights in Western countries is increasingly under pressure. In addition, the gap between the 'winners and losers' of globalisation has helped create a breeding ground for more populist movements and contributed to a diminishing sense of solidarity with the less advantaged in the national or international community – and thus also to an erosion of support for human rights. This is reinforced by the power of social media. The AIV considers these developments to be very worrying, because such attitudes are often at odds with the principles of the current human rights system, including the protection of minorities.

Some writers, such as Samuel Moyn, have come to similar conclusions on the subject of rising socioeconomic inequality and the undermining of the current human rights system. According to Moyn, the human rights movement, with its activists and intellectuals, has accompanied, 'humanised' and facilitated the rise of neoliberalism, instead of criticising this development and proposing an alternative.³⁸ As a result, the fight against socioeconomic inequality has become less prominent.

The two faces of globalisation are also visible elsewhere. For example, globalisation has increased the private sector's impact on human rights. The activities of large multinational enterprises extend all over the world. Sometimes this brings prosperity, but just as often it leads to exploitation and the depletion of resources. This clearly demonstrates the extent to which the time-honoured civilisational idea 'where trade comes, human rights follow' (originally as a cornerstone of Western 'ethical imperialism' and now as part of the discourse on China's Belt and Road Initiative) no longer holds true.

The international human rights system is still inadequately equipped to hold businesses – in their capacity as non-state actors – to account for the negative impact of their activities on human rights. However, there are also encouraging developments. Ever-increasing legislation on corporate social responsibility at national level obliges businesses to respect human rights in global value chains.³⁹ In addition, businesses are increasingly being held legally and morally responsible for potential abuses in their value chains (for example through the UK's Modern Slavery Act and the Dutch Child Labour (Duty of Care) Act). They are also being allocated an increasing role in strengthening human rights. Through self-regulation, various businesses take an active stance on human rights in the countries where they operate.

Social media plays a similar role, both in strengthening and in undermining human rights. Human rights violations are immediately recorded and shared, protest movements are sometimes launched by a single hashtag and digital visibility protects human rights defenders. However, the power of social media can also lead to the erosion of human rights. For example, social media still offers virtually unlimited opportunities to sow hatred, spread disinformation and incite violence. In addition, both repressive and non-repressive governments increasingly control access to and use of social media. The unbridled power of Big Tech companies such as Google and Meta (Facebook) also gives cause for concern.⁴⁰

In addition to these external factors, the way in which the human rights system has developed over the years also poses challenges for its preservation. For example, the indivisibility and interdependence of civil and political rights and economic, social and cultural rights are not adequately guaranteed, for example as a result of the formulation of two separate treaties characterised by varying forms of enforceability. Over the years, moreover, human rights have evolved from a relatively narrow agenda to a broad movement that is capable of encompassing almost any interest. This diversification of rights is not unanimously supported, both on substantive grounds and because these rights have become too diffuse and too detailed in character. At the same time, new global narratives, for example concerning the Sustainable Development Goals (SDGs) and climate and environmental protection, seem to be bypassing the human rights system, including existing legally binding agreements.⁴¹

The multilateral human rights instruments themselves also have several major problems. International and regional bodies (such as courts and treaty bodies) are often overextended and underfunded, while the effectiveness of the UN Human Rights Council (HRC) is under pressure. In addition, the composition of the Security Council, coupled with the ability of the permanent members to veto action aimed at stopping human rights violations in their own or other countries, rightly elicits criticism, both from Western states and from many other countries, including Brazil, India and Japan.

A worrying development that has been detected within the Council of Europe in recent years is the decreasing compliance of states with judgments of the European Court of Human Rights (ECtHR).⁴² Particularly in the case of politically sensitive judgments or rulings that necessitate large-scale reforms, compliance is insufficient or even entirely absent. This applies to EU member states such as Poland and Hungary as well as to other Council of Europe members such as Turkey and Russia. The diminishing effectiveness of peer pressure within the Committee of Ministers when it comes compliance with ECtHR judgments carries the risk that states might eventually ignore all unwelcome rulings. This would seriously undermine the impact of the ECHR and the authority of the Court. In this context, Russia's departure is a source of concern not only because of the loss of legal protection for millions of citizens of the Russian Federation but also because the departure of one of the Council's largest contributors threatens its continuity and effectiveness.

Finally, as pointed out above, the multilateral human rights system does not yet have a good solution to address the role of non-state actors in such a way that human rights are promoted rather than restricted or violated.



▶ 3.3 Sovereignty, universality and a changing narrative

As a result of the above developments, the principle of universality is increasingly under pressure. This is clearly not just because certain states have reservations about this principle. Equally worrying is the fact that several states are undermining and eroding the human rights system through autocratic practices because they have absolutely no interest in it – and consequently appear to be largely unreceptive to any kind of human rights narrative whatsoever.

As noted earlier, the erosion of judicial independence in these countries and the repression of civil society, if existent, are also silencing dissenting voices. In this context, it is worth mentioning the concept of ‘Autocracy Inc.’ introduced by Anne Applebaum to describe the latest manifestation of authoritarian regimes standing by each other and helping each other remain in power by providing mutual support in the form of direct financial assistance or investment, surveillance technology and political and military support.⁴³ Western companies and governments often chip in by investing in the countries concerned, as they did until very recently in the case of Russia, for example.

Due to this mutual support, the resulting culture of impunity and their lack of interest in the fate of their own populations, these regimes are not very receptive to pro-democracy activism despite the often appalling conditions prevailing in their countries. Most autocratic rulers focus mainly on staying in power and self-enrichment. Robust financial and economic measures, such as tackling tax avoidance, better enforcement of money laundering legislation, banning the sale of surveillance technology to autocratic regimes and ‘total divestment’ could therefore strike at the heart of these regimes.

Within the large group of states characterised by autocratic practices, China in particular is making a conscious effort to shift the existing international human rights narrative from its current focus on the rights of the individual to a focus on the right to development of states as a foundational human right.

It is possible to identify various ways in which the existing system of universal human rights is being undermined: ignoring the narrative (states that simply take no notice of human rights); abusing and distorting the narrative (for example, Russia’s claim of an alleged genocide as a pretext for invading Ukraine); attacking the narrative (for example, the contention that human rights belong to a ‘disengaged international elite’ or that they are a purely ‘Western’ construct); and attempting to fundamentally redefine the narrative (for example, China’s policy).

▶ 3.4 New opportunities for advancing human rights

Despite the above-mentioned problems, challenges and risks, there are also new opportunities to promote and protect human rights, as well as a clear set of instruments for doing so. In this context, it makes sense to draw on insights concerning the conditions under which human rights make a difference. The AIV identifies several of these conditions below.

First of all, there are new social protest movements, such as Fridays For Future and Black Lives Matter (BLM), that complement and strengthen existing or earlier social justice movements (such as the World Social Forum and the Occupy movement). It is striking that movements such as these keep

achieving global resonance and that many young people are active in them. Their organisation is often looser and more decentralised than that of existing human rights networks, and some of the methods they use are different, with social media playing a crucial role. Cooperation between these movements, on the one hand, and states and existing human rights organisations, on the other, is often complex and challenging. Although their leaders may also indulge in opportunism and self-enrichment, as recently emerged in the case of BLM,⁴⁴ cooperation with such movements can definitely strengthen the existing narrative and give it a fresh impetus.

In addition, more and more non-traditional actors are adopting a more active stance on human rights. Mounting concerns about corporate human rights violations are also leading to new opportunities. This is partly the result of pressure from increasingly active regulators, civil society organisations, the media and ordinary consumers (especially in the case of businesses that are highly visible because they sell consumer products), and partly the result of certain parts of the private sector becoming more aware, either independently or in collaboration with international organisations. This has led to successful and less successful initiatives in the field of self-regulation (nationally or globally in the framework of the UN Global Compact).⁴⁵ In addition, this mounting pressure has led to national and regional legislation in the field of corporate social responsibility (CSR) that requires businesses to respect human rights in global value chains.⁴⁶

Professional associations and networks are playing an increasingly important role. This is particularly apparent in pro-democracy movements, where professionals from engineers to doctors, as in the case of Sudan, have shown themselves to be well-organised catalysts of mobilisation and change. Other prominent examples include various cross-border solidarity missions designed to safeguard human rights, such as one bringing together Dutch judges and their beleaguered Polish colleagues and another bringing together Dutch lawyers and at-risk lawyers elsewhere. Even certain armed groups in conflict areas have proved receptive to training in the field of humanitarian law, for example.

The sanctions instruments targeting human rights violators are becoming increasingly robust and sophisticated. A key example is the development of new sanctions instruments that focus very specifically on human rights violators within governments and the private sector. Such instruments include national and EU ‘Magnitsky’ legislation that targets individual human rights violators. These instruments are not paper tigers: they are being deployed with increasing frequency.

This is partly related to another positive development and opportunity, namely the continuous strengthening and refinement of the EU’s instruments in the field of human rights protection. Since the 1990s, the EU has inserted mandatory human rights clauses as essential elements in trade, partnership and association agreements. While these agreements cannot be easily suspended on the basis of these clauses, they enable the EU to engage in a dialogue on human rights, democracy and the rule of law with its partners. As an EU member state, the Netherlands can also raise human rights issues in the relevant joint supervisory bodies of bilateral agreements, such as partnership or association councils.

To a large extent, the expansion and strengthening of EU instruments is driven by the above-mentioned external geopolitical threats and internal negative trends within certain member states (including but not limited to Hungary and Poland). All this has revitalised and lent new urgency to the idea of the EU as a community of values based on the rule of law, democracy and human rights. A variety of actors within the EU are spurring action in this area, including various coalitions of member states operating via the Council of Ministers and the European Council, as well as the European Parliament, the European Commission and the EU Court of Justice, whether or not at the prompting of groups of citizens and civil society organisations that exert pressure or bring cases to court.

In practice, this development has resulted in numerous initiatives that focus on both internal and external issues: the new emphasis on the rule of law within the EU (as exemplified by the Commission's new Rule of Law reports) and its linkage to the allocation of EU resources; the expansion and strengthening of the mandate of the EU Fundamental Rights Agency (FRA) in 2022; a greater awareness of the fact that EU institutions can also cause human rights violations and need to be accountable (for example FRONTEX); and the EU Action Plan on Human Rights and Democracy 2020-2024, to name just a few.

Within the Council of Europe, an entire political-legal ecosystem has developed around the ECHR and the European Court of Human Rights, coupled with an expansion in the roles of the supervisory bodies of other treaties, such as the European Social Charter, the European Torture Convention and the Istanbul Convention on preventing and combating violence against women. To cope with the Court's mounting workload, more efficient working methods have been adopted to reduce the backlog of cases. The Committee of Ministers, which monitors compliance with the Court's judgments, has also added new instruments to its toolbox, including the option of referring persistently non-compliant states back to the Court under the infringement procedure laid down in Article 46, paragraph 4 of the ECHR. In addition, human rights organisations and national human rights institutions, such as the Netherlands Institute for Human Rights, have been granted improved access to the Committee of Ministers.

As explained above, new multilateral human rights standards are still being developed. This process is nowadays often driven by states from the Global South (for example in the case of the aforementioned draft treaty on business and human rights), and also continues to be driven by civil society organisations operating independently or within networks. In this context, it is crucial to enhance the focus on actual compliance with new and existing standards and implementation of judgments and decisions of UN and regional human rights bodies. The work of the coalition of civil society organisations that together make up the European Implementation Network (EIN) is a good example of this.

At national level, there has been a sharp increase in the number of national human rights institutions (NHRIs). These institutions operate as watchdogs and promoters of human rights, and often serve as a bridge between governments and civil society organisations in the field of human rights. While there are concerns about their independence in some cases, this development is mostly positive. The accreditation mechanism based on the Paris Principles is working properly, and there are increasingly active and effective partnerships between these institutions at global (GANHRI) and European (ENNHRI) level. New soft law from the Council of Europe emphasises the crucial role played by these institutions. In many countries, they are increasingly involved in proceedings before national courts on behalf of victims, as well as in international human rights proceedings, for example before the European Court of Human Rights and in the framework of the UN Human Rights Council's Universal Periodic Review process.

It is noteworthy that at national level in the Netherlands the influence of human rights is increasing in many non-traditional (that is to say, non-justice-related) policy areas: the debate on the housing market (right to adequate housing), climate (application of human rights in the Urgenda judgments), earthquakes in Groningen (protection of the right to respect for the home and property), access to education during the COVID-19 pandemic (right to education) and the childcare benefits affair (protection against structural discrimination). A human rights perspective lends force to the fight against observed injustice and also provides specific instruments and standards to tackle such injustice. This is a reflection of a trend that is also increasingly evident in countless other countries.

Finally, there is the increasing of role of human rights – and the human rights perspective – at local level. One example of this is the rise of human rights cities (in the Netherlands and abroad) and

the continuing growth of networks between such cities to promote collaborative learning in a wide range of areas, from asylum reception to civic participation and from children's rights to combating discrimination at local level. Cities and other local authorities have an increasingly powerful voice and are becoming increasingly important actors in the field of human rights. This often involves close collaboration with local civil society organisations and voluntary networks in local 'ecosystems' that focus on protecting human rights.

In all these respects, human rights are able to generate a very constructive and vibrant discourse and provide specific instruments to tackle old and new challenges. The aforementioned threats and negative trends relating to human rights protection, especially those emanating from states, thus do not reflect the whole picture. Countless actors that operate outside the framework of central government – from local authorities to businesses and from national human rights institutions to ordinary citizens – are playing an increasingly important role in human rights protection. While this has not been without its difficulties, it forms an important addition to the stark portrait of geopolitical and other threats to human rights presented in this report. In order to ensure that there is a firm foundation for a robust Dutch human rights policy, it is vital to embrace and build on the above-mentioned opportunities for the realisation of human rights.

In conclusion, although the geopolitical and other fundamental shifts of the 21st century pose a significant threat, there are also new opportunities for the global realisation of human rights. While countries such as China and Russia blatantly undermine the multilateral human rights system, there are also robust national and international protest movements, new networks and more sophisticated sanctions instruments aimed at protecting it. The next chapter looks at how the Netherlands should position itself within this constellation of forces.



Pillars for Dutch human rights policy

► 4.1 Domestic and policy challenges for the Netherlands

The second part of this advisory report (chapter 3) analysed how various international events and developments concurred to undermine and ‘erode’ the multilateral system and the international human rights system. At the same time, the AIV identified several developments that create new opportunities for the realisation of human rights. In this part of the report, the AIV discusses the domestic and policy challenges facing the Netherlands before presenting potential directions for the future course of Dutch human rights policy.

The Dutch policy environment poses various challenges in relation to human rights. First, the promotion of human rights tends to be regarded as a stand-alone issue that does not affect other areas of foreign or domestic policy. The divisions and partitions between the various departments of the Ministry of Foreign Affairs and between various ministries can stand in the way of a coherent and consistent human rights policy. In this fragmented environment, we are seeing a phenomenon whereby human rights regularly lose out to economic or political interests. Limited staff numbers and the frequent rotation of staff members between departments also reduce the effectiveness of human rights policy. In the light of geopolitical developments, finally, the Netherlands’ diplomatic missions still have too little scope for action when it comes to human rights.

A second challenge is that every new government term sees the adoption of fresh foreign policy priorities in the field of human rights. By their very nature, these priorities cover only a small portion of the entire range of human rights, are a product of policy accumulation and also change over time as a result of coalition compromises. This makes it impossible to develop a consistent, long-term human rights narrative.

A third challenge concerns the persistent separation of domestic and foreign policy. This ignores the fact that the boundaries between what is national or international are becoming increasingly blurred in today’s network society, in which domestic policy themes have also become global issues and vice versa. When it comes to human rights, the national and the international are also intertwined. An example of this is the sale in the Netherlands of consumer goods that have been produced in other countries in ways that violate children’s and other human rights.

As in many other countries, the contrast between openness and closedness, between people with a more cosmopolitan outlook and people with a more national or local orientation, has become more pronounced in the Netherlands as a result of globalisation processes. Growing uncertainty and scepticism towards foreign countries gives rise to the risk that interest in foreign policy in general will decline and that support for the Netherlands’ long-standing international orientation can no longer be taken for granted.⁴⁷ Against this backdrop, the political reality is that the executive branch is devoting less attention to human rights in foreign policy, a trend that is sometimes reinforced by political impotence or reluctance. The once widespread support for promoting human rights in the framework of international policy has crumbled, in part because considerations of self-interest have become more prominent but also due to doubts about the utility of it.

This decline in support has gone hand in hand with a change in the political climate regarding human rights. Critics talk about the proliferation of these rights, often with specific reference to their many formulations and increasing specialisation in international treaties. In doing so, they conveniently overlook the fact that these treaties were often adopted to protect people in vulnerable situations, including women, children or people with disabilities. This change in attitude towards human rights could have consequences in the Netherlands (consider for instance the calls to limit the role of the courts in human rights protection) but also for Dutch foreign policy. Recent crises, such as the war in Ukraine, have shown just how closely security and human rights are intertwined and that human rights protection is an indispensable part of an effective Dutch foreign policy. However, without sufficient support in Dutch politics, it will be difficult – if not impossible – to secure cross-sectoral involvement in this policy.

► 4.2 The Netherlands' perspectives for action

The Netherlands has a long tradition of promoting the international legal order, including human rights. This tradition goes back to thinkers such as Hugo Grotius (1583-1645), was enshrined in Article 90 of the Constitution in 1953 and has also achieved increasing institutional visibility, both at home and abroad, through the establishment of a growing number of international courts and tribunals in The Hague. In this context, it is important to note that, in the past, the Netherlands was by no means always at the forefront of human rights protection, particularly by current standards. Examples include the country's history of slavery, the decolonisation war in Indonesia and the West New Guinea dispute. Today, there is still room for improvement in various areas: from combating institutional racism to protecting the rights of people with disabilities.

At this time of rising geopolitical tension, it is important to explicitly clarify that human rights are a vital interest for the Netherlands in its foreign relations, alongside other interests in the economic and security spheres, for example. In addition to moral and ethical considerations and the concept of solidarity, international law and human rights protection have contributed greatly to the creation of a global playing field in which a relatively small country such as the Netherlands can thrive. The international human rights system is a legally binding framework. Almost all countries in the world have committed themselves to this framework – either in full or in large part – and all countries are bound by it.

Similarly, when it comes to realising economic and security interests, the Netherlands and – more broadly speaking – the EU benefit greatly from the existence of a robust and stable international legal order in which agreements are respected and an open, fair and level playing field can be developed. The deterioration of this order, as in Russia over the past fifteen years, should have functioned as the proverbial canary in the coal mine: the current threats to international security in Europe were preceded by a prolonged erosion of human rights in Russia itself. As a result, it is now clearer than ever that repression and human rights violations on any scale ultimately often lead to conflicts and global or regional instability, with far-reaching humanitarian consequences that also affect the Netherlands and the EU.

In this context, it must be acknowledged that the current changes in the geopolitical playing field have far-reaching consequences for a country such as the Netherlands. This requires a recalibration of the current course. While the liberal international legal order and Western progressive thinking dominated during the 1990s, the constellation of forces is now substantially different. This calls for a normative and moral commitment to human rights as well as for an approach based on *realpolitik*. The Netherlands needs to recognise this and consider what consequences it should attach to this – both conceptually and operationally – to preserve the international human rights system and the international legal order in general.

► 4.3 Reciprocity: acknowledging Western shortcomings



Foreign policy obviously has its own dynamic. However, the promotion of human rights around the world cannot be separated entirely from human rights at home. As we have seen, the failure of advocates of the human rights system to protect human rights has over time eroded their credibility and undermined the system.

The Netherlands should also keep a critical eye on the human rights situation both at home and in the Caribbean part of the Kingdom, in keeping with the old Dutch adage ‘if you want to improve the world, start with yourself’. The aforementioned childcare benefits affair, in which the fundamental principles of the rule of law were violated, as also harmed the credibility of Dutch human rights policy abroad. Not only is it a good idea to be prepared for the view in the mirror that other countries hold up to the Netherlands, but acknowledging our own situation also enhances our credibility and creates openings for dialogue. For example, the Netherlands itself still draws a sharp distinction between civil and political rights on the one hand and economic, social and cultural rights on the other, and refuses to ratify the Optional Protocol to the ICESCR. As a result, it is harder to legally enforce economic, social and cultural rights here. At the same time, however, the Netherlands attaches great importance to the interests protected by these rights (such as education, health and social security). Another example concerns the fact that the Netherlands actively participates in human rights bodies such as the UN Human Rights Council and actively supports the Office of the UN High Commissioner for Human Rights (OHCHR), while these bodies are often criticised in the media and in parliament.

All this requires greater policy coherence. Criticism of the domestic human rights situation by other states also creates opportunities for a new narrative. Shortcomings and problems in the field of human rights can be found, to a greater or lesser extent, in all countries. However, the important thing is to not deny or trivialise these problems and violations but to emphasise that what matters is how states deal with them. The key question is whether there are remedial mechanisms in place, ranging from a well-functioning democracy governed by the rule of law to the presence and freedom of a variety of watchdogs to identify abuses, from national human rights institutions and ombudspersons to a free and pluralistic media, and from citizen participation to the possibility for victims to obtain legal redress, both nationally and – as a last resort – internationally. The focus should not be on the absence of human rights violations but on ensuring the existence of a constitutional, political and social infrastructure designed to prevent and remedy such violations.



All interpretations of human rights obviously also have their shortcomings, and the Netherlands is no exception in this regard. There is much to be learned from non-Western interpretations and perspectives, such as the emphasis on reciprocity and community in the African philosophy of Ubuntu. Another example is the value that is placed on balancing family interests with individual interests in many Eastern cultures. Needless to say, it is also important to always bear in mind the limits of what human rights can achieve. However, this does not change the fact that human rights are a core value and a key interest for the Netherlands in domestic and foreign policy.

► 4.4 A more integrated approach

The classification of human rights into civil, political, economic, social and cultural rights is a largely outdated notion and an unfortunate consequence of the adoption of two separate UN treaties – the ICCPR and the ICESCR of 1966 – during the Cold War. These rights are grouped together in the Universal Declaration of Human Rights and all thematic UN human rights treaties (from the Convention on the Rights of the Child to the Convention on the Elimination of All Forms of Discrimination against Women). These treaties do not specify which right falls into which category, making it difficult to classify each one individually. For example, the right to freedom of expression

is a civil right, but also a political right, a cultural right (art) and a social right (industrial action). The right to education is a social right and an economic right, but also a cultural right and a civil right. In reality, such classification is not very important. All human rights can entail positive and negative responsibilities and duties.

A similar argument applies to the distinction between collective and individual rights or values. China, Russia and other countries often speak of collective values or collective rights. However, this differs from the traditional distinction between individual freedom rights and group rights, which include solidarity rights (such as the right to a healthy environment, the right to peace and the right to development) and the rights of peoples or certain groups (such as indigenous peoples and minorities). In contrast, when the aforementioned countries talk about collective rights, they are referring to rights as promoted by the state as a representative of society as a whole. They consider individual rights and minority rights to be subordinate to such collective rights.

While there can be significant tension between individual rights and the rights of the collective, the two can also reinforce each other. Individual rights also benefit from a stable society, and certain individual rights, such as freedom of assembly and association, can only exist by virtue of cooperation within collectives. It is therefore important to ensure that Western countries such as the Netherlands are not portrayed as only standing up for individual rights: this is not only far from the truth but also inaccurate from a legal human rights perspective.

As previously noted, universality is not the same as uniformity.⁴⁸ There is room for different interpretations and different rates of implementation. In its foreign policy, the Netherlands must nevertheless stand up for the underlying values of human rights. On the basis of a consistent narrative, it can highlight and emphasise different topics and issues depending on the context and who the discussion partner is. Rather than juxtaposing the importance of one right against that of another (or being drawn into such discussions by other states), it is important to emphasise and promote the permanent protection of the core of each right. In the case of absolute human rights standards (such as the prohibition of torture and the prohibition of slavery), this applies to the entire standard. In the case of human rights that can be subject to limits, this applies to a specific inviolable core. For example, the right to education has at its core the principle of non-discrimination in access to education, while the right to housing has at its core the prevention of homelessness and mass evictions.



In other words, although the introduction of same-sex marriage may not (yet) be feasible or acceptable in every country, the principles of equal treatment and the prevention of violence against LGBTI persons apply at all times and in all places, regardless of cultural or national context. This does not change the fact that any limitation of human rights must comply with the relevant conditions under international law. The Netherlands should be able to hold countries to account if their limitations on human rights are not determined by law, do not serve a legitimate purpose or are neither necessary nor proportionate. The existence of appropriate safeguards is therefore crucial.

In short, the categorisation and juxtaposition of human rights requires some qualification. It is more meaningful and effective to propagate the indivisibility and interdependence of human rights in robust and practical terms.

► 4.5 New partnerships and an inclusive agenda

In order to strengthen human rights in the current constellation of geopolitical forces, it is essential to actively build new coalitions and partnerships, both multilaterally (for example within the Council of Europe and the EU) and with countries with similar interests and non-state entities.

These partnerships are not always unambiguous and a certain amount of flexible thinking is therefore required: not all non-democratic states automatically violate human rights, and not all democratic states automatically defend them. All countries face challenges in the field of human rights. Acknowledging this, and conducting a dialogue on this basis, provides a foundation for such partnerships and for the international human rights system itself.

As a result of the increase in so-called spoiler countries (Poland, Hungary and others) and the decline in unequivocal support for human rights within the EU (this applies to different countries depending on the specific theme), it is vital to provide solid backing to the central EU institutions. It appears that Germany's new government coalition wants to strengthen its good cooperation with the Netherlands, while the Netherlands can also rely on strong partners such as France, its fellow Benelux members and the Scandinavian countries.

At the same time, in the absence of EU consensus, the Netherlands should not be deterred from providing an active counterweight to major powers such as China, Russia or Saudi Arabia via coalitions of like-minded EU countries (or other coalitions). This is already happening in relation to certain human rights themes but should be pursued much more actively, specifically also in the framework of North-South coalitions. In this context, the Netherlands can build on existing cooperation with like-minded states (such as Canada and specific countries in Latin America, Africa, the Middle East and Asia) but can also enter into smart coalitions with states that may not share its commitment or values in all areas but can nevertheless be persuaded to cooperate in a specific one (for example Indonesia or South Africa).

The search for new partnerships – and new forms of partnership – can also profit from the opportunities in the area of human rights identified in this advisory report. In addition to the community of states, a global and local network society in which a wide range of non-state actors play a role is rapidly emerging. For example, more attention is being devoted to the role of businesses in ensuring respect for human rights. Other actors that may be amenable to cooperation, especially in countries where the intergovernmental human rights dialogue is challenging, include national human rights institutions and ombudspersons, local civil society organisations and movements, youth movements, churches and other belief-based organisations, and local authorities. In the countries concerned, the counterweight to autocratic regimes often comes mainly from within the population and, where possible and permitted, from organisations.

In some countries, religious institutions are sometimes better placed to promote the ethos of human rights than government agencies. Moreover, the Netherlands has had contacts with civil society organisations in countries for many years. These contacts deserve to be given a prominent role in the implementation of human rights policy, and other options such as expanding the dialogue with non-profit organisations, should also be considered. With due regard to the neutrality of the state, affiliated religious institutions can help clarify that freedoms and responsibilities are interrelated. Needless to say, any steps in this area should be taken only on the basis of a profound understanding of the local context.

For the Netherlands' diplomatic missions, this implies a much more active role as a liaison or intermediary, in collaboration with the Ministry of Foreign Affairs and other ministries, with a view to promoting peer-to-peer partnerships. What is already standard practice in the economic sphere (establishing connections between the Dutch private sector and local businesses) would also be of great added value in the field of human rights, in particular by substantially expanding current efforts to establish connections between local authorities and Dutch human rights cities, between professional associations of judges and their Dutch counterparts, and between human rights defenders and NGOs and Dutch organisations operating in the same field. The Ministry of Foreign Affairs and the global mission network can play a key role in this area by promoting cooperation

alongside bilateral contacts. This in turn can contribute to the protection and enhancement of the civic space in the countries concerned.



► 4.6 Providing a more active counterweight

For decades, Dutch human rights policy has been characterised by a recurrent and oft-cited conflict between ethical, moral and sometimes ideological considerations, on the one hand, and direct, practical self-interest, often of a commercial nature, on the other. This in itself understandable but often rightly criticised dichotomy is known as the dilemma of the preacher and the merchant. In the context of this dilemma, the Netherlands expresses genuine concern for human rights and supports a range of relevant programmes and organisations, while simultaneously arguing that this should not cause excessive harm to its direct economic interests.

The practice of acting on the basis of power-political considerations – based on one’s own position of power (bilaterally or as a member of the EU and NATO) and in-depth knowledge of the position of power and power-political actions of one’s discussion partners – is much less developed in the Netherlands. In light of geopolitical changes, especially the rapid increase in autocratic practices in other states, this should receive much more attention and be treated as an intrinsic part of human rights policy. In this context, while acknowledging that there are many different forms of political government in the world, it should be argued more persuasively that promoting human rights contributes both to national and international security and stability and to the shared goal of a functioning international legal order based on agreements concluded at international level. In addition, it should be emphasised that effective human rights protection better facilitates stable and lasting economic development.

In addition to a continued willingness to engage in a realistic dialogue, this requires a keen eye for and knowledge of policy – and the thinking underlying such policy – in other countries. Where it becomes clear that countries have no interest in the international legal order and international agreements, the Netherlands should take appropriate measures – preferably multilaterally (via the EU or the UN) or through ad hoc coalitions, but if necessary also unilaterally – in the absence of positive steps by the country in question. Examples of such measures include support for opposition movements in autocratically governed states and transactional measures in the form of economic, political, cultural or other targeted restrictions and sanctions, even if such measures hurt the Netherlands. This approach also requires the Netherlands to actively offer forms of cooperation and support in cases where countries are prepared to take positive action.



▶ 4.7 A new narrative: human rights as the crucial link between core values and policy goals

A robust and effective human rights policy requires a strong foreign policy narrative. In this new, powerful narrative, human rights are the crucial link between the Netherlands' core values and policy goals at national and international level. Specifically, they connect two important and related sets of core values:

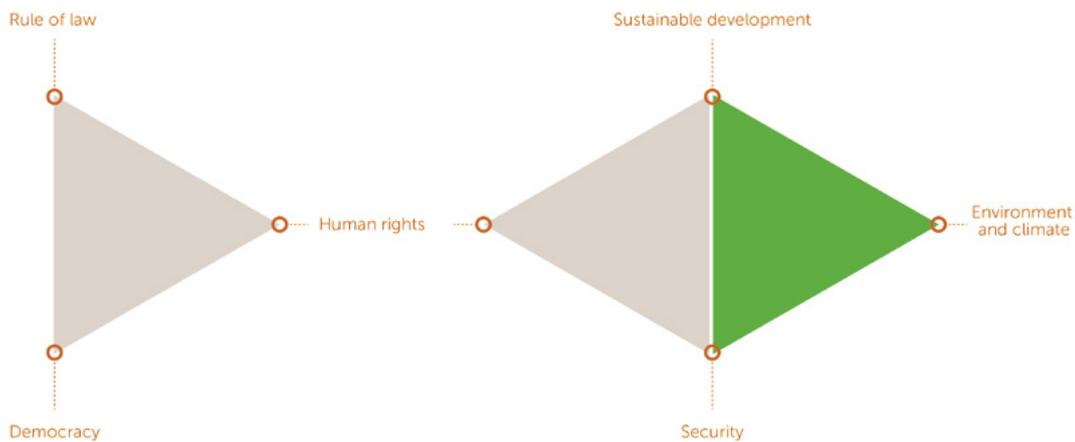


Figure 1: Human rights as the crucial link between core values and policy goals

The elements that make up the first triangle are the rule of law, democracy and human rights. More than a predictable set of rules, the rule of law is a system in which, if it functions properly, every person with power can be held accountable for how they exercise that power, an independent and impartial judiciary and other accountability mechanisms function effectively, and human rights form the basis for the exercise of power (also known as a 'thick' rule of law).⁴⁹



When the rule of law functions properly it also provides mechanisms for legal redress for victims of human rights violations within countries. Democracy means not only that the majority decides but also that the rights and interests of minorities are safeguarded. This, in turn, cannot be achieved without effective rule of law mechanisms such as the separation of powers and the possibility of recourse to the courts or other mechanisms, such as ombudspersons or national human rights institutions, for legal protection and redress. Human rights, for their part, can only be safeguarded on a lasting basis by democracy and the rule of law. These three elements are therefore inextricably linked and to some extent even part of each other, as the AIV noted in its advisory report *The Will of the People? The Erosion of Democracy under the Rule of Law in Europe*.⁵⁰ They are also the main treaty-based and policy principles of two international organisations that are crucial to the Netherlands: the EU and the Council of Europe.

The elements of the second triangle are human rights, sustainable development and security; and a new (fourth) key element should be added, namely the environment (climate and biodiversity), creating a third triangle (the green one). As a general rule, security cannot exist – internationally or internally – if human rights are being violated. Violations within states cause social unrest and violent escalation at home and geopolitical instability and tension across borders, from armed conflicts to migration flows and online destabilisation. At the same time, the use of increasingly hybrid forms of warfare often causes human rights violations. A similar picture emerges in the case of development, which can only be sustainable if citizens are able to participate and the rights and interests of affected groups are taken into account. Sustainable development focuses on the interests of people and the

planet. Without the protection of human rights, there can be no lasting security or sustainable development. In other words, as the AIV has previously noted, *human security*, *human* and sustainable development and *human rights* are inextricably linked.

Sustainable development goals and human rights can reinforce each other.⁵¹ National and multilateral action that acknowledges this connection is also the most effective starting point for safeguarding an emerging (fourth) core value: the environment (climate and biodiversity). This is because the urgency and importance of solving environmental problems has become so great that this value can no longer be subsumed under the banner of 'sustainable development'. It deserves to be treated as a separate value, not least because it is also directly linked to human rights and security.

While human activity in recent decades has come at the expense of biodiversity and has accelerated climate change to an alarming degree, human rights can make a positive contribution. This is because they provide local communities with the means to report pollution, gain access to information and safeguard the interests of future generations through participation and legal action. The UN Human Rights Council emphasised this connection at the end of 2021 by recognising the right to a safe, clean, healthy and sustainable environment and by appointing a Special Rapporteur on the promotion and protection of human rights in the context of climate change.⁵²

Since it is the only value that features in both triangles, the protection and promotion of human rights forms the crucial link between the Netherlands' core values and policy goals at national and international level, as illustrated below. It also integrates the core values and interests propagated by the EU, the Council of Europe and the UN.

It follows from the above that we must leave behind artificial distinctions or dichotomies in discourse and policy, such as the two Dutch archetypes: the merchant and the preacher. The various elements should be regarded as mutually reinforcing, based on an approach that puts people (as part of the wider global ecosystem) at the centre.

In conclusion, Dutch human rights policy faces challenges relating to compartmentalisation, shifting priorities and the general decline in interest in and appreciation for foreign policy. This does not reflect the Netherlands' international law tradition or the importance that the Netherlands attaches to this tradition, which comes with a responsibility to take human rights seriously in our own country in particular. As far as foreign policy is concerned, this calls for a combination of explicit normative positions and political realism. A more integrated approach, new partnerships and the provision of an effective counterweight, on the basis of an understanding of other countries, are key building blocks in this regard.





Endnotes



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Request for advice



Ministry of Foreign Affairs

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Chairman of the Advisory Council
on International Affairs
P.O. Box 20061
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Date

Re Request for advice on human rights in a changing world: preconditions for an effective policy and a new narrative

Dear Professor De Hoop Scheffer,

I have the honour of requesting your advice on the following matters.

The multilateral system, which has been the foundation of international cooperation on human rights, is under pressure. The liberal world order, which originated after the Second World War and reached its apogee in the 1990s, is no longer uncontested. Autocratic states are eroding the system from within, reducing public support for multilateral cooperation, and acting transactionally, putting their own interests first rather than foregrounding shared values and interests.

The consequences of these developments are perceptible throughout the multilateral system, including human rights bodies. Our current international human rights standards and institutions were developed after the Second World War, with the Universal Declaration of Human Rights as their point of departure. The Declaration rests on three basic principles: universality, equality/non-discrimination and indivisibility. These principles are being increasingly questioned, not only by autocratic states but also by several governments of EU member states. By modifying the language used in resolutions and statements, blocking decisions, securing the appointment of their preferred candidates and officials, diverting financial flows and influencing internal rules and Special Procedures, these countries are successfully curbing the power and effectiveness of the human rights system.

A recurrent theme in the international human rights dialogue is the relationship between fundamental freedoms and socioeconomic rights. Autocratic states usually place a one-sided emphasis on socioeconomic rights at the expense of individual rights to freedom. This issue has several dimensions. Besides the character of rights (individual vs. collective), and the type of rights (civil and political or socioeconomic, cultural and environmental), the political system that shapes rights is also at issue. The question is what relation these rights bear to one another, in both institutional and policy terms, and how human rights diplomacy can deal effectively with these tensions. The Dutch government attaches great importance to ensuring that civil and political rights continue to receive sufficient attention in the human rights system.

Promoting the development of the international legal order is one of the tasks of the Kingdom's foreign policy, including promoting the observance of human rights. This government has enhanced the Netherlands' policy focus on human



rights in its foreign policy, due both to their inherent importance and to its conviction that respect for human rights fosters a more stable and prosperous world.

The Human Rights Report for 2017 mentioned several preconditions for an effective human rights policy. Space for civil society, for example, is a general precondition for promoting human rights and implementing human rights policy worldwide. Moreover, a country like the Netherlands can only achieve tangible results by working with like-minded partners. When the EU speaks with one voice, for example, it can send a far stronger message than the Netherlands can on its own. Multilateral instruments and institutions that function effectively are also crucial in raising specific human rights issues.

It is exactly these preconditions for effective policy that are jeopardised by the rapidly increasing role of autocratic states with regard to human rights. Space for civil society is being constricted; due to a lack of consensus, the EU is less capable of acting in concert; and the influence of autocratic states is putting the multilateral human rights instruments under pressure.

The question is: how can we have an effective human rights policy in a changing world? In connection with this general question, the following specific questions are posed:

- How can the growing, adverse influence of autocratic states on the human rights system be resisted?
- How can we guarantee the preconditions for an effective human rights policy, such as space for civil society, the formation of effective partnerships and the proper functioning of multilateral human rights instruments and institutions?
- How can we ensure the continuing utility of the international human rights system?
- How can we ensure that civil and political rights continue to receive sufficient attention in the multilateral human rights system?
- Can a modernised human rights narrative be developed that responds to autocratic tendencies to cast doubt on the basic principles of human rights and focus mainly on socioeconomic rights? What could the building blocks be of such a narrative? Could a narrative of this kind be used to enhance public support for human rights domestically and abroad, while not only promoting a counter-narrative but also focusing on the importance of human rights in creating a more stable and prosperous world?

I look forward to receiving your advice concerning these questions.

Yours sincerely,

Stef Blok
Minister of Foreign Affairs

List of persons consulted

Several external experts were consulted prior to the drafting of this advisory report. The AIV is grateful to them for their insights and contributions.

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List of abbreviations

ASEAN	Association of Southeast Asian Nations
BLM	Black Lives Matter
CDHRI	Cairo Declaration on Human Rights in Islam
CSR	Corporate Social Responsibility
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EIN	European Implementation Network
ENNHRI	European Network of National Human Rights Institutions
EU	European Union
FRA	Fundamental Rights Agency (EU)
FRONTEX	European Border and Coast Guard Agency
GANHRI	Global Alliance of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NATO	North Atlantic Treaty Organization
NGO	non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights (UN)
OSCE	Organization for Security and Co-operation in Europe
R2P	Responsibility to Protect
SDG	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
US	United States



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