

## The Evolution of International Human Rights Protection Instruments: How Indivisibly and Universally Are Human Rights Implemented Around the World

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What is the impact of human rights: how significant are the central human rights provisions and treaties, the institutions of the human rights protection system, and the human rights movement in view of the not insignificant current challenges? At the end of the Cold War, it initially looked as if the challenges against human rights and democracy had been overcome and that solutions to global problems were achievable through a multilateral, rule-based order in which human rights could be the cornerstone. This assessment can and would no longer be formulated in a similar way today, taking into consideration the growing authoritarian challenges in many countries, the sharply rising global inequality, and the threatening ecological trends. Where do we stand, then? What is the significance of human rights treaties, institutions, and movements today? This question will be explored in this chapter. The answer is—perhaps surprisingly—cautiously optimistic.

In June 1993, the Second International Conference on Human Rights took place in Vienna, which was to become a landmark event for the last three decades of human rights work and the development of the international human rights protection system. The Vienna Conference—organized shortly after the end of the Cold War—achieved three major advances in the implementation of human rights: first, it was agreed that human rights are universal, applying to every person in the world. Second, the canon of human rights was defined as indivisible, that is, it encompasses all human rights: civil and political human rights, as well as economic, social, and cultural human rights. The Vienna Conference asked strongly for the protection and the implementation of all human rights because the dignity of every human being requires the realization of all of them. Third, the Vienna Conference provided an impetus for improving and expanding the national and international human rights protection system.

How has the human rights protection system evolved since then? Is it adequately resolute or robust for the implementation of human rights worldwide? The current challenges to the system for the protection and promotion of human rights are large. The number of authoritarian regimes is growing; the scope for action by civil society organizations is being restricted in many countries; the dimension of global problems is enormous, especially in the ecological sphere, in climate change and the protection of biodiversity; and economically huge transformation processes of the economy lie ahead, from an exploitive system of human beings and the ecosystems to a sustainable economy. These trends challenge the full realization of many human rights, including, as an example, the right to an adequate standard of living, the realization of which is influenced by rising sea levels, an increase in extreme weather events, changes in the framework conditions of agriculture and in the availability of water. The number of hungry people is already increasing. The Sustainable Development Goals (SDGs), which were jointly formulated and adopted in 2015—in parallel with the Paris Climate Agreement—are hardly achievable. As an example, where SDG 2 asked for an end to hunger by 2030, the trend is in the opposite direction.<sup>1</sup> It is relevant for several of these goals, such as the reduction of extreme poverty, the preservation of biodiversity, and the combatting of climate change, that they are hardly likely to be achieved in the remaining eight years. In 2020 to 2022, the handling of the pandemic has made it clear that global justice issues, such as access to vaccines regarding the right to health have hardly been adequately resolved, and the war in Ukraine changed the prioritization and allocation of resources—be it material resources for weapons and humanitarian support or political resources such as political attention and priority setting.

In view of these challenges, what can an appropriate human rights response look like and how can the existing instruments be strengthened and further developed? What role do human rights play in the search for solutions, since solutions to the problems often have to be sought in other policy areas as well? After looking back to give an overview of the strengths and weaknesses

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1. The COVID-19 pandemic is contributing to increasing hunger. The number of people suffering from hunger has increased by approximately 100 million to between 720 and 811 million since 2019. See FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021: Transforming Food Systems for Food Security, Improved Nutrition, and Affordable Diets for All* (Rome: FAO, 2021), <https://www.fao.org/documents/card/en/c/cb4474en>. The current food price trends after the start of the war against Ukraine will exacerbate this food insecurity.

of the existing human rights system, we will consider whether the system is responding adequately to the challenges mentioned and which innovations and further developments would be necessary to improve it.

## **The Development of the Human Rights Protection System Since 1993**

Why were these advances of the Vienna Human Rights Conference so important? Because they responded to central challenges for human rights, and the conference was able to formulate a common answer.

First, it was reaffirmed, as formulated when the Universal Declaration of Human Rights (UDHR) was drawn up in 1948, that human rights apply universally. That is, they are the frame of the international legal order worldwide, even in view of different cultural backgrounds and traditions: the Vienna Declaration is characterized by the recognition of the dignity of every person worldwide.<sup>2</sup> When the UDHR was formulated in 1948, the number of participating states in the United Nations was considerably lower than today: 56 states voted in the adoption of United Nations Resolution 217. The process of decolonization had not yet taken place; the current number of UN members, which is over 190, came about as a result of the independence of many states from the 1950s onward. Again and again, this low number of states was used as an argument to deny the legitimacy of the UDHR as Western or coming from the global North. David Kennedy even spoke of a “tainted origin.”<sup>3</sup> Authors such as Hans Joas have conclusively refuted this as already not true when the declaration was drafted in the United Nations Commission on Human Rights and have described the context and the people involved, who came from very different cultural areas. He showed that this is not a document that can be assessed as “biased.”<sup>4</sup>

The reaffirmation of universality in Vienna in 1993 now included all new member states of the United Nations. The two central human rights treaties—the Covenant on Civil and Political Rights and the International

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2. “The Vienna Declaration and Programme of Action,” <https://www.ohchr.org/sites/default/files/vienna.pdf>.

3. David Kennedy rejects the term “tainted origin.” David Kennedy, “The International Human Rights Movement: Part of the Problem?” *Harvard Human Rights Journal* 15 (2012), 101–25, at 114, <https://harvardhrj.com/wp-content/uploads/sites/14/2020/06/15HHRJ101-Kennedy.pdf>.

4. Hans Joas, *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte* (Frankfurt a.M.: Suhrkamp, 2011).

Covenant on Economic, Social and Cultural Rights—now have more than 170 ratifications, and some of the other human rights conventions, such as the Convention on the Rights of the Child, have now been signed by almost all states, which is close to universal ratification.

Central to the recognition of the universality of the Vienna Human Rights Conference was the special focus and affirmation of the human rights of women and girls. An impressive tribunal on women's rights was held at the parallel NGO Forum. It became clear that many violations of women's rights take place in the private sphere of families and that the issue of violence against women needs to be addressed. The final text of the Vienna Conference states: "The human rights of women and girls are an inalienable, integral and indivisible part of universal human rights."<sup>5</sup>

Second, in addition to the universality of human rights, the indivisibility of human rights was affirmed in Vienna. The protection of human dignity also includes the protection and implementation of economic, social, and cultural human rights, and the freedom from want, where the rights to housing, health, and education are important core areas. Already in the aftermath of the formulation of the UDHR, it was no longer possible to develop one common human rights treaty that included all the rights contained in the UDHR, due to the emerging Cold War. It took a long time until the two central human rights conventions were developed instead. Both have been in force since 1976: the International Covenant on Civil and Political Human Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Human Rights (ICESCR). The onset of the Cold War made it increasingly difficult to talk about human rights in their entirety, with the West accusing the East of violations of civil and political human rights and the East accusing the West of ignorance about economic, social, and cultural (ESC) human rights. For a long time, this split stood in the way of an equal recognition of ESC rights; they were not seen as rights but rather as political goals that can be implemented only if sufficient resources are available. Today it is accepted—and the Vienna Conference has helped considerably in this respect—that there are no fundamental differences between the two areas of law. An understanding of the threefold nature of state obligations to protect human rights has developed: the state must refrain from violating human rights through its own action (obligation to respect); it must protect people on its territory from violations of human rights by third parties (private actors, companies, armed groups, etc.) as part of its obligation to protect;

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5. "Vienna Declaration and Programme of Work," 18.

and it must also use resources to proactively implement these rights as part of its obligation to guarantee. The obligation to respect can be implemented primarily through refraining from state action (no arbitrary arrests, no forced evictions from the land); the other two obligations also require the use of resources. All human rights, as well as civil and political human rights, create these three types of state obligation.

Third, the Vienna Conference and its declaration advocated for a strengthening of institutions to implement and monitor the realization of human rights. It led to the creation of both the Office of the High Commissioner for Human Rights and the position of the High Commissioner for Human Rights at the international level. At the national level, the declaration and the plan of action asked for the establishment of national human rights institutions that should be created as independent institutions with the mandate for protecting and promoting human rights at the national level.<sup>6</sup> This was a major impulse for strengthening the human rights infrastructure of the United Nations. The international human rights protection system was further developed and strengthened in 2006 through the establishment of the Human Rights Council as a subsidiary body of the UN General Assembly and the regular review of all states on their respective implementation status of human rights through the Universal Periodic Review (UPR). Overall, the institutional structure for the implementation of human rights is comparatively small and weakly financed. Beside the mentioned institutions, the instruments of human rights protection include many other instruments, seven other special conventions, as well as working groups of the Human Rights Council and special thematic and country-specific mandates of the Commission on Human Rights, which was followed in 2006 by the Human Rights Council.<sup>7</sup>

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6. There are currently 117 national human rights institutions (NHRIs), 86 of which are classified as independent. NHRIs are reviewed for their independence every five years in accordance with the Paris Principles, which were also drawn up in 1993. In Germany, the German Institute for Human Rights is the national human rights institution. It was founded in 2001 by a unanimous decision of the Bundestag.

7. The core human rights conventions include those against racial discrimination, torture, and enforced disappearance as well as those related to specific groups of people, the Women's Rights Convention, the Children's Rights Convention, the Migrant Workers Convention, and the Convention of Persons with Disabilities. The working groups include the Working Group on the Right to Development, the Working Group on Business and Human Rights, the Expert Mechanism on Indigenous Peoples, etc. This is not the place to go deeper into the details of the International Human Rights Protection system.

## **How Effective Is the System and What Challenges Does It Face?**

Human rights conventions or treaties are not automatically implemented, despite ratification by many signatory states. Human rights must always be fought for. Most deficits in the implementation of human rights treaties are determined in particular by the situation in individual countries. Even if the treaties alone do not guarantee protection against human rights violations, their benefit is considerable, as they make clear what inalienable human rights comprise. This always strengthens the victims in the knowledge of what is wrong and delegitimizes the perpetrators.

How can the developments since 1993 be assessed? Are the instruments really oriented toward realizing the indivisibility of all human rights? Is universality accepted or increasingly questioned? Is the human rights protection system sufficiently fit for the challenges outlined?

### **Universality**

The number of authoritarian regimes worldwide is increasing, and not only in the perception. For a long time, far more than half of the world's population lived in democracies. Now, however, according to the Bertelsmann Foundation's Transformation Index, just under 49 percent of the world's population still live in democracies.<sup>8</sup> Many of these existing democracies can be described as defective. The number of countries in which the scope for civil society is declining is increasing, as documented by the Atlas of Civil Society, a key indicator of freedom and participation.<sup>9</sup>

Several reasons come together to explain how the trend reversal to authoritarianism has come about. The narrowing of civil society's space is a reaction of the decade of the 1990s, which was a decade of growth for civil society actors. In many countries, thousands or tens of thousands of civil society actors were founded during the 1990s. The series of world conferences of that decade was accompanied by a strengthening of a global basis of international non-governmental organizations and international networks. These have used the new institutions, created also in human rights

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8. BTI Transformation Index, "Democratic Resilience under Pressure," See also in detail the Bertelsmann Transformation Index 2020, <https://bti-project.org/en/press>.

9. Brot für die Welt / Civicus (Hrsg), *Atlas der Zivilgesellschaft 2020*, [https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2\\_Downloads/Fachinformationen/Atlas\\_d\\_zivilgesellschaft/2020/Atlas\\_der\\_Zivilgesellschaft\\_2020.pdf](https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Atlas_d_zivilgesellschaft/2020/Atlas_der_Zivilgesellschaft_2020.pdf).

and the human rights protection system, to hold states more publicly and more vociferously to account. Authoritarianism can therefore also be read as a reaction of traditional political, economic, and military elites to the increasing demand for public accountability.

Promotion of democracy was at the same time very much oriented toward the promotion of elections as a key indicator for measuring democratic change. The importance of a democratic institutional landscape has been underestimated in many countries: this includes free and independent media, the development of political parties, independent party financing, control institutions ranging from audit offices to labour inspectors, and social interest groups such as employers' associations or trade unions. We are therefore not only witnessing the emergence of defective democracies; in some cases, it is incomplete political systems that have been tolerated or barely improved as long as elections were at least held.

An important challenge to universal validity came from the West itself, especially in its reaction to the 11 September 2001 attacks and Islamist terror. The at least partial relativization of torture in the Iraqi prison Abu Graib or in Guantanamo provides excuses for other regimes to also point to the restriction of human rights.

## **Indivisibility**

Economic inequality is one of the greatest human rights challenges facing the world today. Nearly half of the world's population lived on less than US\$5.50 per day in 2020; due also to population growth, poverty rates have increased in South Asia, Africa, and the Middle East since 1990.<sup>10</sup> According to the Global Prosperity Report 2019, the poorest 50 percent of adults worldwide have less than 1 per cent of global wealth, while the richest 10 percent of adults account for 82 percent of wealth and the top 1 percent has 45 percent of global wealth.<sup>11</sup> Many reports by the United Nations, NGOs such as Oxfam and the Centre for Economic and Social Rights, but also by economists, show the impact of economic inequality on the realization of various economic and social human rights, such as access to education and

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10. World Bank, *Piecing Together the Poverty Puzzle* (Washington, DC: World Bank Group, 2018), <https://openknowledge.worldbank.org/bitstream/handle/10986/30418/9781464813306.pdf>.

11. Credit Suisse, *Global Wealth Report 2019* (Zürich: Credit Suisse, 2019), <https://www.credit-suisse.com/about-us/en/reports-research/global-wealth-report.html>.

health services, infant mortality, lower life expectancy, etc.<sup>12</sup>

During the 1990s and the first decade of the 2000s, the focus of international attention was mainly on poverty reduction with the Millennium Development Goals. The Sustainable Development Goals aim to tackle also social inequality, which is to be reduced within and between countries. De facto, however, inequality has not only exploded on a global scale, but also in many countries. Several economists<sup>13</sup> have published studies that document this trend as one that is happening in most countries and on a global scale. Oxfam is documenting the trend in its global inequality report every year. “Since 1995, the top 1% [of people on earth] have captured nearly 20 times more of global wealth than the bottom 50% of humanity.”<sup>14</sup> The COVID-19 pandemic has also shown how much economic inequality affects access to the health system and to job opportunities through digitalization, even in times of pandemic. Many already disadvantaged population groups, such as Indigenous people in Brazil or the US, Roma in Europe, or casteless Dalits in India, have a much higher mortality rate and suffer particularly from the economic effects.

Inequality is also perpetuated in and by climate change. Philip Alston, who was UN Special Rapporteur on Extreme Poverty until 2020, has pointed out that the poorest half of the world has contributed just 10 percent of carbon dioxide emissions, while the richest 10 percent is responsible for half of the emissions. At the same time, the richest have a better chance of adapting to climate change, the most severe impacts of which will be felt in regions where the most vulnerable (rural populations, farmers, etc.) live.<sup>15</sup>

Indeed, it has taken a long time—since the Vienna Human Rights Conference—for the understanding of the indivisibility and equal value of economic, social, and cultural human rights to develop. The work of the UN Committee on Economic, Social and Cultural Rights has contributed to this since 1987, as has the work of smaller human rights organizations that

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12. See the compilation of literature in Gillian MacNaughton, Diane F. Frey and Catherine Porter in the introduction to the anthology they edited, *Human Rights and Economic Inequalities* (Cambridge: Cambridge University Press, 2021).

13. See as examples Branco Milanovic, *Global Inequality: A New Approach for the Age of Globalisation* (Cambridge, MA: The Belknap Press of Harvard University Press, 2016); Thomas Piketty, *Das Kapital in 21. Jahrhundert* (München: C.H. Beck, 2014).

14. Oxfam, “A Deadly Virus: 5 Shocking Facts about Global Extreme Inequality,” <https://www.oxfam.org/en/5-shocking-facts-about-extreme-global-inequality-and-how-even-it>.

15. Phillip Alston, Report of the Special Rapporteur on Extreme Poverty and Human Rights (UN, 2019) UN Doc. A/HRC/41/39.



have advanced the global understanding of economic, social, and cultural human rights enormously by focusing on individual rights violations.<sup>16</sup> In development policy, a human rights-based approach has been advocated for many years, and progress has been made on many issues.<sup>17</sup> At universities, too, it has taken a long time for the field of research on these rights to grow. Today, of course, they can be found in all recent constitutions since the 1980s, the number of cases before courts is increasing enormously, and the reference of human rights organizations has also risen sharply. The fact that the two large international human rights organizations, Amnesty International and Human Rights Watch, have had such a hard time approaching this part of human rights has certainly not been useful for a long time in the recognition of the indivisibility of all human rights, but they have since 2004 gradually also taken up work in this area.

Has this long neglect of economic, social, and cultural issues contributed to the fact that the recognition of human rights by social movements in the global South has been perceived as deficient? Samuel Moyn in particular has made his mark with this thesis. In his book *Human Rights in an Unequal World*, he goes even further: he does not criticize the lack of work on ESC rights but locates economic neoliberalism and human rights in the same tradition of thought. He sees a seemingly correct chronological relationship between the common emergence of human rights and neoliberalism.<sup>18</sup> This is an inadequately researched thesis in two senses. On the one hand, he is hardly familiar with human rights work on ESC rights and underestimates the numerous works of human rights activists in this context; on the other hand, he locates the global assertion of human rights in the 1970s with its use by the United States after Jimmy Carter and completely fails to recognize the intercultural genesis of the UDHR as described above.

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16. For example, FIAN (FoodFirst Information and Action Network) on the right to food or Habitat International on the right to housing, both of which have documented cases in their thematic area since the mid-1980s.

17. UN Sustainable Development Group, "The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies" (2003), <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>.

18. Moyn writes "the apparently tight chronological relationship between the twinned rise of human rights and 'neoliberalism'." Samuel Moyn, "Human Rights and the Age of Inequality," in *Can Human Rights Bring Social Justice? Twelve Essays*, ed. Doutje Lettinga and Lars van Troost (Amnesty International Netherlands, 2015), 16. [https://www.amnesty.nl/content/uploads/2015/10/can\\_human\\_rights\\_bring\\_social\\_justice.pdf](https://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf).

Kathryn Sikkink has reacted to this and made it clear that neoliberalism, with its focus on the individual as rational, self-interested, and self-maximizing, cannot be equated with the understanding of human rights.<sup>19</sup> Human rights focus on the individual as the bearer of individual rights, on the dignity of each person, on the well-being of the individual in the broadest sense. Therefore, individual human rights have legal and moral priority over other political issues. Human rights often presuppose that individual self-interest can be limited in order to protect the rights of other people.

The ongoing backlog in recognition of and work on ESC rights and the still low level of engagement with issues of economic justice and equitable distribution of resources is a core task for the human rights movement to credibly guarantee human dignity in a comprehensive way. Economic inequality is both a consequence and a cause of human rights deprivation and needs to be addressed more by the human rights movement.

## **Institutions**

The institutions of the human rights protection system have developed and grown in number since the Vienna Human Rights Conference. Some new human rights treaties, such as the Convention on the Rights of Persons with Disabilities and the Convention against Enforced Disappearances, have been adopted since then, and the number of treaty bodies—the expert bodies that monitor the implementation of these core human rights treaties—has grown to ten. As well, many new country and thematic mandates have been added. Currently, almost 60 special rapporteurs, special representatives, and independent experts have received a mandate from the Human Rights Committee since 2000, in addition to various working groups, usually consisting of five members, one from each region of the world. Many of these experts have produced important reports, developed guidelines on the implementation of individual human rights, and produced excellent reports on the situation in individual countries and for the overall understanding of human rights. However, with the large number of mandates collectively agreed upon by the community of states, there is a danger that the system is becoming somewhat frayed and lacks focus. In view of the limited financial resources available for human rights at the United Nations, the instruments quickly come into conflict; also, the system becomes financially vulnerable when individual states do not pay their contributions adequately. Since 2014,

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19. Kathryn Sikkink, *Evidence for Hope in Human Rights Work in the 21st Century* (Princeton: Princeton University Press, 2017).

for example, there have been discussions about strengthening the system of treaty bodies. The procedure of regular human rights reviews by these treaty bodies can certainly become more efficient and be improved in its substantive stringency. However, the reform process that began with Resolution 68/268 of the General Assembly in 2014 can also be used to financially weaken this area of the human rights protection system, which is particularly concerned with the accountability of states and with the framework in which the implementation of human rights treaties is monitored.

The human rights protection system is in need of its own strong lobby at the United Nations. As the number of authoritarian states grows, human rights-violating states are elected to the Human Rights Council in larger numbers, and it becomes more difficult than before to make human rights-friendly decisions. The 20 years following the Vienna Conference were characterized by such a human rights-friendly majority in the relevant bodies, a constellation that has changed in recent years. Quite a few of these human rights-critical states are now pursuing their own agenda there. They are no longer concerned only with keeping condemnations in the human rights system moderate, which was their role for a long time: they now come up with proposals for resolutions which, in substance and spirit, run counter to existing human rights standards.

## **New Challenges**

In addition to these challenges from within the system, from authoritarian or populist regimes, there are changing framework conditions and new challenges to the enforcement of human rights. The biggest challenge is likely to be the worsening ecological crises caused by climate change and biodiversity loss, which will have a massive impact on human rights worldwide, especially economic, social, and cultural human rights. The second major challenge is to control private actors who can have an enormous footprint on human rights. Especially in times of globalization, it has become more difficult for states to manage and control international companies or financial investors. Companies can change countries and regions too quickly, swap countries, and escape tax rules or legal regulations. This is especially true for companies in the digital economy, which have been able to establish their business models internationally and are difficult to control. Successful control of the activities of private actors that leads to respect for human rights or enables states to fulfil their duty to protect people on their own territory is a very difficult task that is already being tackled by the human rights movement and the human rights protection system.

## In Conclusion

If it did not exist, it would be necessary to invent a new Universal Declaration of Human Rights as the Charter of Fundamental Rights of the United Nations. The fact that there is growing resistance to the human rights agenda is mainly due to the fact that human rights call for transparent and participatory policies oriented toward the full realization of all rights contained in the Universal Declaration of Human Rights. This requires a commitment to the rule of law, a trend that is being challenged in many countries because traditional and new elites want to secure their own power and reject accountability for their decisions.

The non-implementation of human rights and resistance against their claim to validity are and were nothing new historically and should not be underestimated, especially in retrospect, to the situations in the middle of the Cold War. The determined commitment of civil society, academia, experts, and human rights–friendly states is still necessary to defend a strong human rights protection system.

As bleak as the picture of the human rights system has recently been shown by some scholars (Moyn, Kennedy) as dependent on neoliberalism, without reference to questions of inequality and decolonization, they are empirically wrong. Kathryn Sikkink has shown in her book *Evidence of Hope* how much has changed empirically in the recognition and implementation of human rights. Every gain in understanding of discrimination always triggers resistance. Nevertheless, the discourse on women's rights, on the perception of domestic violence as a human rights issue, on accessibility for people with disabilities, on taking children's concerns and participation seriously in policy decisions affecting them, on the importance of a human rights–based approach to dealing with food, water, housing, health, or the connection of business and human rights is in a very different place today than it was three decades ago.

Human rights have their universal recognition and meaning in the experience of injustice, in which what constitutes human dignity is understood across all cultures. Human rights do not fall from heaven: they have to be fought for again and again, and in doing so, new strategies are being used by experts and the human rights movement from time to time, such as strategic litigation, which has become increasingly important in recent years, especially in the areas of business and human rights and with respect to ecological and environmental challenges. This strategic innovative capacity of the human

rights movement is challenged by the current increase in resistance against human rights in authoritarian states. An intensive debate on and promotion of a culture of human rights—of a concrete practice of human rights—is needed.<sup>20</sup> It is encouraging to see that the civil society, including religious actors from the global South, is becoming more involved in the current human rights discourse and that questions of justice, decolonization, and the ecological crisis are coming more into focus. The global movement for human rights must and will change to address the new challenges adequately.

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20. See Wolfgang Kaleck, *Die Konkrete Utopie der Menschenrechte. Ein Blick zurück in die Zukunft* (Frankfurt a.M.: S. Fischer Verlag, 2021).