

Reinterpreting human rights in the climate crisis: Moving beyond economic growth and (un)sustainable development to a future with degrowth

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journals.sagepub.com/home/nqh**Judith Bueno de Mesquita** 

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Abstract

The UN General Assembly has recently recognised that unsustainable development and climate change ‘constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights’. International human rights law is evolving to obligate States to tackle climate change, including through mitigation measures. At the same time, economic growth and sustainable development are often upheld to underpin the realisation of human rights. However, economic growth is a significant contributor to climate change, which, in turn, harms human rights. This article argues that these contradictions require a recalibrated interpretation of economic growth under international human rights law, in particular in terms of: (i) the nature of the relationship between human rights and sustained economic growth in Global North States, which disproportionately contribute to climate change, and consequentially (ii) the degree of alignment of the 2030 Agenda on Sustainable Development with international human rights law. Different visions are abounding for ecologically sustainable social and economic life. This includes proposals for degrowth which centre on a planned reduction in consumption and use of resources, especially in the Global North. This article uses degrowth as a case study to argue that such proposals provide crucial insights to support the interpretation of, and pathways for, the realisation of human rights within planetary boundaries, and to shape a rights-based, and sustainable post-2030 development landscape.

Keywords

International covenant on economic social and cultural rights, future generations, degrowth, economic growth, sustainable development goals, extraterritorial obligations, climate change

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I. INTRODUCTION

Once neglected, the serious and growing human rights impacts of climate change are now widely acknowledged. In 2022, the UN General Assembly recognised that unsustainable development and climate change ‘constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights’.¹ International human rights treaties are increasingly interpreted to obligate States to take climate change action, including mitigation measures in line with the 2015 Paris Agreement and its central commitment to hold the increase in the global average temperature to well below 2°C, and pursue efforts to limit temperature rises to 1.5°C above pre-industrial levels.² Recent recognitions of the right to a healthy environment, and of an obligation on States to prevent foreseeable future harms to human rights in the context of climate change, are among the developments that have clarified and strengthened the imperative of ambitious climate change mitigation as an obligation under international human rights law.

Economic growth serves as a significant factor in the generation of greenhouse gas (GHG) emissions, contributing to climate change,³ which, in turn, harms fundamental human rights. Particularly vulnerable are marginalised groups and populations in the Global South, who are disproportionately impacted by climate change. The climate crisis has been overwhelmingly fuelled by GHG emissions from States in the Global North.⁴ The tension between economic growth and climate change constitutes a fault line in global development commitments, and is notably evident when examining Sustainable Development Goal (SDG) 8 on ‘sustained, inclusive and sustainable economic growth’, and SDG 13 on ‘urgent action on climate change and its impacts’ under the 2030 Agenda for Sustainable Development (2030 Agenda).⁵ Although the 2030 Agenda commits to ‘green growth’ – an approach which aims to harmonise economic growth with environmental sustainability through the absolute decoupling of gross domestic product (GDP) growth from carbon emissions – some climate scientists and ecological economists warn that this approach is insufficient to meet the Paris Agreement targets.⁶

International human rights mechanisms and scholars have often recognised that economic growth and sustainable development can benefit human rights,⁷ though some have highlighted that the pursuit of economic growth can conflict with the promotion and protection of human

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1. UNGA, ‘The Right to a Safe, Clean, Healthy and Sustainable Environment’ (26 July 2022) UN Doc A/76/L.75, Preamble.
 2. Paris Agreement under the UNFCCC (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1 (Paris Agreement), Article 2(1)(a).
 3. For example, IPCC, *Climate Change 2022: Mitigation of Climate Change* (IPCC 2022); Jason Hickel, ‘The Contradiction of the Sustainable Development Goals: Growth versus Ecology on a Finite Planet’ (2019) 27 *Sustainable Development* 873. Economic growth is also implicated in other dimensions of ecological breakdown, although this article focuses on climate change.
 4. Jason Hickel, ‘Quantifying National Responsibility for Climate Breakdown: An Equality-based Attribution Approach for Carbon Dioxide Emissions in Excess of the Planetary Boundary’ (2020) 4 *Lancet Planetary Health* 399.
 5. UNGA, ‘Transforming Our World: the 2030 Agenda for Sustainable Development’ (25 September 2015) UN Doc A/RES/70/1.
 6. Jason Hickel and Giorgos Kallis, ‘Is Green Growth Possible?’ (2020) 25 *New Political Economy* 469; Timothée Parrique and others, *Decoupling Debunked* (European Environment Bureau 2019).
 7. See, for example, Matthias Petel and Norman Vander Putten, ‘Economic, Social and Cultural Rights and Their Dependence on the Economic Growth Paradigm: Evidence from the ICESCR System’ (2021) 39 *Netherlands Quarterly of Human Rights* 53; Arjun Sengupta, ‘On the Theory and Practice of the Right to Development’ (2002) 24 *Human Rights Quarterly* 837.

rights.⁸ However, there has been a notable lack of scholarship on the bearing of climate change, and of climate change mitigation as a human rights obligation, on the relationship between economic growth and human rights. Addressing this lacuna, this article analyses the relationship between international human rights law, economic growth, and sustainable development, in light of climate change. Given the fault line within global development commitments to climate change mitigation and economic growth, as reflected in existing interpretations of international human rights law, this article contends that a recalibrated approach to economic growth and sustainable development under international human rights instruments is necessary to honour the interpretation of climate change mitigation as a human rights obligation. With a focus on economic, social, and cultural (ESC) rights, this article argues that States in the Global North,⁹ as the predominant contributors to climate change, bear a distinctive obligation under principles like common but differentiated responsibility. Specifically, they should be recognised as having an obligation to move beyond growth-based sustainable development under treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (UNCRC).¹⁰ These States should consider alternative proposals to guide policy making, and this article argues that degrowth is one such approach that can better protect the environment whilst respecting human rights. Degrowth proposals, which have been developed with the context of States in the Global North in mind,¹¹ involve the democratic downscaling of production and consumption notably in these countries to bring human activity within planetary boundaries, while equitably maintaining or improving living standards through enhancing access to public services, labour protections, and income redistribution. Although there has been limited attention to human rights in the degrowth discourse and to degrowth in the human rights discourse, this article argues that the goals and features of degrowth align broadly with international human rights norms. Degrowth provides insights into how human rights may be interpreted and realised, whilst also taking necessary climate change mitigation measures in the Global North.

Section 2 of this article examines the relationship of human rights and climate change, as well as key climate change mitigation obligations under the Paris Agreement and international human rights law. Section 3 proceeds to examine the tension between climate change and economic growth, and

8. See, for example, Wouter Vandenhoele, 'De-Growth and Sustainable Development: Rethinking Human Rights Law and Poverty Alleviation' (2018) 11 *Law and Development Review* 647; Olivier De Schutter, 'Economic Growth is Not a Magic Wand for Ending Poverty' (*The Guardian*, 20 March 2023) <<https://www.theguardian.com/global-development/2023/mar/20/economic-growth-is-not-a-magic-wand-for-ending-poverty#:~:text=A%20new%20report%20from%20the,for%20celebration%2C%20this%20is%20not.>> accessed 30 August 2023.

9. Rather than referring to strict geographical distinctions, the term 'Global North' is used to refer to affluent countries, such as the United States, European countries, Israel, Australia, New Zealand and Japan, which are disproportionately responsible for the climate crisis. Global South countries, which include all of those in Africa, Asia and South America, have limited historic responsibility for the climate crisis, though emissions in some such countries are rising. The Paris Agreement uses the terms 'developed' and 'developing' countries to refer to the Global North and Global South, respectively. Such categories are not necessarily static in the context of climate change, with evolutionary potential under the principle of common-but-differentiated responsibility and respective capabilities. See, Christina Voigt and Felipe Ferreira, "'Dynamic Differentiation": The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement' (2016) 5 *Transnational Environmental Law* 285, 294.

10. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 03 January 1976) 993 UNTS 3; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 3.

11. Ashish Kothari and others, 'Buen Vivir, Degrowth, and Ecological Swaraj: Alternatives to Sustainable Development and Green Economy' (2014) 57 *Development* 362.

the implications for interpreting economic growth and the 2030 Agenda under international human rights law. Section 4 explores degrowth as an example of a proposed alternative to growth-based sustainable development, which centers on human and ecological well-being and exhibits overarching alignment with international human rights norms. As we pass the midpoint of the 2030 Agenda era and with an eye on what comes next, and with the ongoing drafting of a General Comment on sustainable development by the UN Committee on Economic Social and Cultural Rights (CESCR), this article concludes by arguing that degrowth provides crucial insights to support the interpretation of, and pathways for, the realisation of human rights in the context of the climate crisis, and to shape a rights-based, and sustainable post-2030 development landscape.

2. FROM THE PARIS AGREEMENT TO INTERNATIONAL HUMAN RIGHTS LAW: THE RISE OF INTERNATIONAL CLIMATE CHANGE MITIGATION OBLIGATIONS

Human activity has caused multifaceted environmental harms, including global warming through increased GHG emissions, which is the particular focus of this article. In their influential work on ‘planetary boundaries’, a concept which describes a safe operating space for humanity, Rockström, Steffen, Richardson, and colleagues identified climate change as one of nine key, inter-related, earth system processes. Climate change is also one of six processes where the planetary boundary has been breached,¹² posing the risk of more extensive, harmful, and irreversible ecological changes that will undermine humanity’s ability to thrive and develop. The anthropogenic climate crisis, which threatens lives, livelihoods, incomes, and water and food security, and has resulted in displacement, disease, injury, and malnutrition, has been fuelled by the unsustainable use of energy and land, driven by excessive lifestyles, consumption, and production patterns. Hickel has estimated that countries in the Global North are responsible for 92% of CO₂ emissions in excess of the safe planetary boundary for climate change of 350 ppm atmospheric CO₂ concentration, while most countries in the Global South are within their planetary fair shares.¹³

The causes and effects of climate change have elicited an increasingly broad response under international law. Climate change action is centrally addressed by the Paris Agreement, which is legally binding on its 193 States Parties, but there is a growing recognition of international human rights treaties as a direct source of legal obligations *vis-à-vis* human rights in the context of climate change. Whilst such treaties require a rounded response that considers adaptation, mitigation, loss and damage, financing, and education to protect human rights in the present, redress violations, and prevent future violations, this article focuses on mitigation obligations which are most closely related to addressing economic growth as a source of global warming.

2.1. MITIGATION OBLIGATIONS UNDER THE PARIS AGREEMENT

The Paris Agreement seeks to enhance the implementation of the United Nations Framework Convention on Climate Change (UNFCCC), the international legal framework governing

12. Johan Rockström and others, ‘Planetary Boundaries: Exploring the Safe Operating Space for Humanity’ (2009) 14 *Ecology and Society* 32; Will Steffen and others, ‘Planetary Boundaries: Guiding Human Development on a Changing Planet’ (2015) 347 *Science* 736; Katherine Richardson and others, ‘Earth Beyond Six of Nine Planetary Boundaries’ (2023) 9 *Science Advances* 1.

13. Hickel (n 4).

climate change cooperation, aspiring to stabilise atmospheric GHG concentrations.¹⁴ The Paris Agreement is centred on a commitment to keep temperature rises well below 2°C and pursue efforts to keep them under 1.5°C of pre-industrial levels. With this in mind, States are obligated to formulate and implement mitigation measures, including reducing anthropogenic emissions in accordance with nationally determined contributions (NDCs) that reflect the highest possible ambition.¹⁵ These NDCs are to be updated every five years with increasingly ambitious targets. In line with principles of equity, common but differentiated responsibilities, respective capabilities, and different national circumstances,¹⁶ Global North States are expected to take the lead ‘by undertaking economy-wide absolute emission reduction targets’.¹⁷

The importance of these ambitious commitments can be well understood in the light of risks to humans at different levels of temperature rises.¹⁸ A rise of 1.5°C compared to 2°C could reduce the number of people exposed to climate risks and poverty by up to 457 million, and the number of early deaths by 190 million over the century.¹⁹ To limit temperature rises to 1.5°C, the Intergovernmental Panel on Climate Change (IPCC) calculated that emissions should almost halve by 2030 relative to 2019 levels, and reach net zero by 2050.²⁰ However, the world is falling short. The combined current pledges of 193 States Parties put the world on track for 2.5°C warming above pre-industrial levels by the end of the century,²¹ risking even greater harms, including to human rights.

2.2. MITIGATION OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

The international human rights community has been criticised for its complacency in tackling climate change.²² Yet in the wake of the Paris Agreement – which acknowledged in its Preamble that States Parties should ‘when taking action to address climate change, respect, promote and consider their respective obligations on human rights’ – a flurry of activity by the UN human rights system and scholars has begun to clarify the application of international human rights law to climate change.²³ Increased recognition and concern about human rights harms in the context of climate change, and recognition that the international human rights system provides avenues for accountability, have brought international human rights law to the forefront as a legal basis to challenge States for harmful actions and inactions in their responses

14. UNFCCC (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

15. Paris Agreement (n 2), Articles 4(2)-(3).

16. *ibid*, Article 2(2).

17. *ibid*, Article 4(4).

18. Though the human rights-focus of this article lends to a particular focus on the human impacts of climate change, the climate rises also poses significant risks to non-human animals and nature which also need to urgently be addressed.

19. IPCC, *Global Warming of 1.5°C* (IPCC 2018), 44 and 464.

20. *ibid*, 12.

21. UN Climate Change, ‘Climate Plans Remain Insufficient: More Ambitious Action Needed Now’ (*United Nations Climate Change*, 26 October 2022) < <https://unfccc.int/news/climate-plans-remain-insufficient-more-ambitious-action-needed-now> accessed 21 March 2023.

22. Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights Philip Alston (25 June 2019) UN Doc. A/HRC/41/39, para 88.

23. See, for example, Sébastien Duyck and others, *Routledge Handbook of Human Rights and Climate Governance* (Routledge 2018); Philippe Cullet, ‘Human Rights and Climate Change – Broadening the Right to Environment’ in Kevin Gray and others (eds), *The Oxford Handbook of International Climate Change Law* (OUP 2016) 495.

to climate change.²⁴ Much attention has focused on protecting human rights *in* mitigation-related schemes, in response to the violation of human rights of local communities or workers in clean energy and forest protection schemes.²⁵ However, scholars such as Mayer have also emphasised the role of mitigation *for* the realization of human rights.²⁶ As Cullet has argued, mitigation is ‘just as important, if not more so’ to realise human rights in the longer term.²⁷ Knox has likewise affirmed the importance of mitigation as a human rights obligation, particularly for States that are major emitters.²⁸

Human rights to health, food, housing, water and sanitation, culture, life, development, property, self-determination, and a healthy environment are among those most undermined by climate change.²⁹ This is due to the impact of climate change on increasingly frequent and extreme weather events, such as hurricanes, storms, and heavy rainfall; reduced crop yields, increasing food insecurity; increased vector-borne diseases, drought, and associated fires; coastal and inland flooding; and land loss, as well as lowered work capacity and productivity.³⁰ Climate change has already played a role in numerous devastating extreme weather events, and its impact is poised to intensify, with events currently deemed extreme anticipated to become the norm in the years ahead. Climate change, with substantial implications for human rights, is projected to lead to an estimated additional 250,000 human deaths per year from 2030–2050.³¹ Moreover, it may place an additional 100 million people in extreme poverty between 2015–2030,³² and increase the number of people at risk of hunger from 10 to 20% by 2050.³³ These harms and risks are disproportionately borne by groups experiencing disadvantage and discrimination, such as indigenous populations; children; older persons; racially and ethnically marginalised groups; people living in poverty; and populations in the Global South and in Small Island Developing States. As the dependence on the private sector grows, the wealthy may find avenues to evade hunger, threats to health, and conflict, while people living in poverty often lack such resources, thereby exacerbating the risk of creating a ‘climate apartheid’.³⁴ Though climate change is largely a problem of the Global North’s making, Global South States will not only experience its worst impacts but be saddled

24. Riccardo Luporini and Annalisa Savaresi, ‘International Human Rights Bodies and Climate Litigation: Don’t Look Up’ (2023) 32 *Review of European, Comparative and International Environmental Law* 267.

25. Cullet (n 23) 500; Amnesty International, ‘Failure to Act Swiftly on Climate Change Risks Human Rights Violations on a Massive Scale’ (*Amnesty International*, 8 October 2018) <<https://www.amnesty.org/en/latest/press-release/2018/10/failure-to-act-swiftly-on-climate-change-risks-human-rights-violation-on-massive-scale/>> accessed 26 October 2023.

26. Benoit Mayer, ‘Climate Change Mitigation as an Obligation Under Human Rights Treaties?’ (2021) 114 *American Journal of International Law* 409.

27. Cullet (n 23) 501.

28. John Knox, ‘Human Rights Principles and Climate Change’ in Gray (n 23) 214, 228.

29. UNGA, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment John Knox (15 July 2019) UN Doc. A/74/161, para. 26.

30. IPCC, *Climate Change 2022: Summary for Policy Makers* (IPCC 2022) <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf> accessed 21 March 2023.

31. WHO, *Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s* (WHO 2014) 1.

32. Stephane Hallegatte and others, *Shock Waves: Managing the Impacts of Climate Change on Poverty* (World Bank 2015) 2.

33. John Vidal, ‘Climate Change Will Hit Poor Countries Hardest, Study Shows,’ (*The Guardian*, 27 September 2013) <<https://www.theguardian.com/global-development/2013/sep/27/climate-change-poor-countries-ipcc>> accessed 21 March 2023.

34. Alston (n 22), para 51.

with 75% of its damage costs,³⁵ squeezing the availability of resources for health, education, water, food, justice, and other systems which underpin fundamental human rights.

Recent UN human rights treaty bodies' General Comments, Statements, Views and Concluding Observations, which constitute authoritative interpretation of core international human rights treaties, have clarified that States' human rights obligations require climate change mitigation. The treaty bodies have drawn heavily, but not exclusively, on the Paris Agreement to determine the substance of these obligations.³⁶ In a Statement from 2018, the CESCR affirmed that States should meet commitments under the UNFCCC and revise their NDCs in accordance with the highest possible ambition, as referred to in the Paris Agreement, in order to act consistently with their human rights obligations.³⁷ Against a backdrop of human rights harms in green energy projects, the CESCR's Statement also emphasised that States should take their human rights obligations into account in the design of their NDCs, clarifying that they should respect principles including gender sensitivity, participation, transparency and accountability and embrace local and traditional knowledge.³⁸ Building on this Statement, in 2019, a Statement issued by five treaty bodies jointly affirmed that:

[T]o comply with their human rights obligations, and to realise the objectives of the Paris Agreement, [States] must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition [Article 4.3], foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.³⁹

In General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change,⁴⁰ the UN Committee on the Rights of the Child (CRC) similarly drew on the Paris Agreement to clarify that major historic and current emitters are required to 'take the lead' in mitigation efforts, including by undertaking 'economy-wide absolute emissions reduction targets', and that 'urgent and ambitious action' is needed to reduce atmospheric concentrations of GHGs.⁴¹ This position is important in clarifying the obligations of Global North States under international human rights law. The General Comment also departed in some ways from the Paris Agreement. The Paris Agreement placed emphasis on the use of technology in mitigating climate change. Article 10 mentions the 'importance of technology for the implementation of mitigation' and highlights that innovation is critical for a long-term response to 'climate change and promoting economic growth and sustainable development'.⁴² In contrast, the General Comment would appear to reflect doubts

35. World Bank, *World Development Report 2010: Development and Climate Change* (World Bank 2010) 5.

36. Christina Voigt, 'The Climate Change Dimension of Human Rights: Due Diligence and States' Positive Obligations' (2022) 13 *Journal of Human Rights and the Environment* 152.

37. CESCR, 'Statement on Climate Change and the ICESCR' (31 October 2018) UN Doc. E/C.12/2018/1, para. 6.

38. *ibid.*

39. Committee on the Elimination of Discrimination Against Women (CEDAW) and others, 'Joint Statement on Human Rights and Climate Change' (14 May 2020) UN Doc. HRI/2019/1.

40. CRC, 'General Comment No. 26: Children's Rights and the Environment with a Special Focus on Climate Change' (22 August 2023) UN Doc. CRC/C/GC/26.

41. *ibid.*, paras. 95-98.

42. Paris Agreement (n 2) Article 10(2) and 10(5).

among scientists about relying too heavily on technological solutions.⁴³ It stated that mitigation cannot rely on ‘unproven technologies’ to remove GHG from the atmosphere in the future and emphasised that States should ‘prioritise rapid and effective emissions reductions now in order to support children’s full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature’.⁴⁴ Despite the progressive nature of obligations under the Paris Agreement, whereby States must increase the ambition of successive NDCs, the CRC also pointed out that ‘delaying a rapid phase out of fossil fuels will result in higher cumulative emissions and thereby greater foreseeable harm to children’s rights’. The CRC emphasised that the ‘time frame for preventing catastrophic climate change and harm to children’s rights is shorter and requires urgent action’.⁴⁵ Acknowledging that human rights abuses have arisen in some mitigation projects, the General Comment further called for the protection of children’s rights in such schemes.⁴⁶ The CESCR, the CRC, and other treaty bodies’ Concluding Observations on States’ periodic reports have recommended, amongst others, that States should refrain from oil and gas extraction, reduce the use of coal-fired power, promote renewable and alternative energy sources, and reduce public and private investment in the fossil fuel industry, as well as other carbon-intensive sectors.⁴⁷ These recommendations are notable, including because of the significant contribution of fossil fuel industries to economic growth.

The recognition of climate change mitigation as a human rights obligation has not been confined to the UN human rights treaty bodies. The General Assembly resolution on the right to a healthy, clean and sustainable environment, called for ‘full implementation of the multilateral environmental agreements under the principles of international environmental law’,⁴⁸ which would include the Paris Agreement. In addition, recent domestic decisions have framed climate change mitigation as a human rights obligation under national constitutions, as well as with reference to international human rights law.⁴⁹ There is also concurrence with this interpretation in the academic literature.⁵⁰

International human rights mechanisms and scholars have also begun to clarify some of the complexities around the nature of States’ climate change obligations. While space does not permit an exhaustive examination of this topic, this article will now mention three clarifications that are relevant to understanding the States’ climate change mitigation obligations in terms of interpretations of economic growth and sustainable development under international human rights law, as explored in Section 3.

43. Pete Smith and others, ‘Biophysical and Economic Limits to Negative CO₂ Emissions,’ (2016) 6 *Nature Climate Change* 42; Glen Peters, ‘Does the Carbon Budget Mean the End of Fossil Fuels?’ (*Climate News*, 6 April 2017) <<https://cicero.oslo.no/en/articles/does-the-carbon-budget-mean-the-end-of-fossil-fuels>> accessed 11 December 2023; Global CCS Institute, *Global Status of CCS 2015: Summary Report* (Global CCS Institute, 2015).

44. CRC (n 40) para 98(e).

45. *ibid*, para 98(c).

46. *ibid*, paras. 97-98(a).

47. See, for example, CESCR, ‘Concluding Observations on the fourth periodic report of Luxembourg’ (15 November 2022) UN Doc. E/C.12/Lux/CO/4, paras 10–11; CESCR, ‘Concluding Observations on the fourth periodic report of Ecuador’ (14 November 2019) UN Doc. E/C.12/Ecu/CO/4, paras 11–12; and, CESCR, ‘Concluding Observations on the fourth periodic report of China’ (22 March 2023) UN Doc. E/C.12/Chn/CO/3, paras 24-26.

48. UNGA (n 1), para 1.

49. UN Environment Programme, *Global Climate Litigation Report: 2023 Status Review* (UN Environment Programme 2023), 36.

50. Mayer (n 26) notes ‘The relevant [academic] literature is largely supportive of the interpretation of human rights treaties as the source of mitigation obligations’, 412.

First, States must respect, protect, and fulfil human rights in the context of climate change policies.⁵¹ In the context of climate change mitigation, obligations to *respect* may include actions such as refraining from gas and oil extraction, and reducing public investment in the fossil fuel industry.⁵² The obligation to *protect* requires States to prevent harm by third parties, for example, through regulating emissions to prevent foreseeable harm.⁵³ Obligations to *fulfil* require positive steps to prevent foreseeable harms to human rights as a consequence of climate change, for example, by transitioning to clean energy.⁵⁴ Fossil fuels have a central ingredient of economic growth in industrialised countries whilst economic growth has also driven energy demand.

Second, in the *Sacchi et al v Argentina et al* decision, which concerned an alleged failure to cut emissions by five respondent States who are all major emitters, the CRC had an opportunity to clarify the obligations of such States, including the geographic scope of their jurisdiction over trans-boundary harm, as a result of climate change. Although the CRC held the case inadmissible due to non-exhaustion of domestic remedies, as regards jurisdiction, the CRC clarified that it considered a State to exercise jurisdiction over harms which are reasonably foreseeable and

if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question.⁵⁵

In line with the Paris Agreement's principle of 'common but differentiated responsibility', the Committee held that the high-emitting defendant States have obligations to children beyond their territory.⁵⁶ As such, it affirmed that high-emitting States are not solely obligated to undertake mitigation efforts for the benefit of rights holders within their own territories – in accordance with more traditional interpretations of international human rights law – but also for those beyond their territories.

Third, in addition to the broad geographic scope of human rights-based mitigation obligations, a long-term temporal scope to these obligations is also emerging, whereby States' obligations extend to the future repercussions of their present actions. In General Comment No. 26, the CRC acknowledged children's rights as a source of mitigation obligations, recognising the potential impact of climate change on them throughout their lifetime, even though the full implications of States' actions or inactions may not be apparent for decades to come.⁵⁷ The rights of future generations are also increasingly framing the interpretation of international human rights law. For example, the Human Rights Committee recognised 'climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life'.⁵⁸ Similarly, the General Assembly has recognised the serious threat posed by climate change to future generations' human rights.⁵⁹ The Maastricht Principles on the Human

51. CEDAW (n 39), para 1.

52. CESCR (n 47).

53. CEDAW (n 39), para 1; *Sacchi et al. v Argentina et al*, Communication No 104/2019, UN Doc. CRC/C/88/D/104/2019 (2021), para 10.9.

54. CRC (n 40), para 68.

55. CRC (n 53), para 10.7.

56. *ibid*, para. 10.10.

57. CRC (n 40), para 11.

58. Human Rights Committee, 'General Comment No. 36 on the Right to Life' (3 September 2019) UN Doc. CCPR/C/GC/36, para 62.

59. UNGA (n 1), Preamble.

Rights of Future Generations, adopted by a group of experts seeking to clarify and provide a progressive interpretation of international human rights law, affirm that future generations are ‘legally entitled to human rights’ under international law.⁶⁰ The Paris Agreement and 2030 Agenda committed to intergenerational equity and meeting the needs of future generations respectively. Bachelet argues that the commitment in the Paris Agreement to intergenerational equity ‘places a duty on us to act as responsible stewards of our environment, and ensure that future generations can fulfil their human rights’.⁶¹ Such recognitions are strengthening an imperative for States to mitigate climate harms to human rights well into the future.

Nevertheless, recognition of a long-term temporal scope is not uncontested. In *Billy et Al v Australia*, the Human Rights Committee held that Australia must implement adaptation measures to protect the applicants - eight Torres Strait Islanders and their children - against climate change-related violations. However, the Committee stopped short of finding a violation on the basis of the country’s inadequate mitigation measures, holding that Australia’s future adaptation plans would be sufficient.⁶² The concurring opinion of Gentian Zyberi intimated an imbalance in this approach, and that the decision should have linked ‘more clearly to mitigation measures, based on national commitments and international cooperation... if no effective mitigation actions are undertaken in a timely manner, adaptation will eventually become impossible.’⁶³ Like the *Sacchi* decision, this opinion identified a need for a longer-term temporal approach to mitigation as an immediate positive obligation to safeguard against foreseeable climate change harms.⁶⁴

In summary, international human rights law is increasingly interpreted to require States to implement climate change mitigations measures, with high-emitting States required to take economy-wide, absolute emissions reduction targets urgently to meet the human rights now and in decades to come, of those within and beyond their territories. These far-reaching interpretations, and particularly the strong positions of the CRC on this matter, have profound implications for how the economies of States should be managed, especially considering that economic growth drives energy demand and is a major contributor to climate change. In addition to implications for specific industries, such as fossil fuels, which have been identified by treaty bodies, these climate mitigation obligations have a bearing – yet to be addressed by treaty bodies – on how economic growth and sustainable development should be interpreted under international human rights law.

60. Maastricht Principles on the Human Rights of Future Generations (2023), Principle 2. <<https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>> accessed 1 September 2023.

61. Michelle Bachelet, ‘SDG 16 and Realising the Right to Participate – Empowering People as Agents of More Effective Climate Change’ (*United Nations Office of the High Commissioner*, 9 December 2019) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25413&LangID=E>> accessed 1 September 2023.

62. *Billy et al. v Australia*, Communication No. 3624/2019, UN Doc. C/135/D/3624/2019 (2022).

63. *ibid*, Annex 4.

64. Christina Voigt, ‘UNHRC is Turning up the Heat: Human Rights Violations Due to Inadequate Adaptation Action to Climate Change’ (*EJIL:Talk*, 26 September 2022) <<https://www.ejiltalk.org/unhrc-is-turning-up-the-heat-human-rights-violations-due-to-inadequate-adaptation-action-to-climate-change/>> accessed 13 September 2023.

3. THE INCOMPATIBILITY OF ECONOMIC GROWTH AND CLIMATE CHANGE MITIGATION: REINTERPRETING ECONOMIC GROWTH AND SUSTAINABLE DEVELOPMENT UNDER INTERNATIONAL HUMAN RIGHTS LAW

Economic growth has been at the heart of mainstream economics and a central development objective worldwide since the 1950s. Since the 1980s, development has been conceptualised to encompass the expansion of peoples' freedoms within the framework of social or human development,⁶⁵ and environmental protection under the sustainable development paradigm. However, economic growth has remained a central preoccupation of these approaches. Sustainable development, with its tripartite commitments to people, planet, and profit, does not alter the assumption that growth is necessary, and the size and growth of a nation's economy continues to be widely used as key benchmarks of its success.

Climate and other environmental critiques of economic growth are not new. Fifty years ago, the influential the Club of Rome report, 'Limits to Growth', forewarned that exponential growth would eventually collapse due to the exhaustion of resources and polluting of the environment it requires⁶⁶ – a vision later developed by Rockström *et al* as a safe operating space for humanity, commonly known as 'planetary boundaries'.⁶⁷ With increasing worldwide concern about environmental degradation, attention has also turned to economic growth as a root cause of ecological and climate breakdown.⁶⁸ Calling for an end to growth, research by various social scientists⁶⁹ has moreover challenged 'green growth theory', which holds that technological change and substitutions will be able to absolutely decouple growth from resource use and carbon emissions, a theory which has which influenced governments, international organisations and the framing of the 2030 Agenda.⁷⁰ Hickel and Kallis argue that there is no empirical evidence that absolute decoupling from resource use can be achieved globally under economic growth and that it is highly unlikely that absolute decoupling from carbon emissions could be achieved fast enough to meet the Paris Agreement's climate mitigation targets.⁷¹ This is because economic growth increases energy demand, making it more difficult to transition to clean energy. The 2018 IPCC report lists various emissions scenarios to keep global warming within 2°C, the vast majority rely on bioenergy and carbon capture and storage (BECCS) to the point of achieving negative emissions - yet such technologies are highly speculative and unproven at scale, while some also have significant

65. Amartya Sen, *The Idea of Justice* (Allan Lane 2009) 231.

66. Donatella Meadows and others, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (Universe Books 1972).

67. Rockström (n 12).

68. See, for example, André Gorz, *Ecologie et Politique* (Seuil, 1978); Herman Daly, *Beyond Growth: The Economics of Sustainable Development* (Beacon, 1997); Serge Latouche, *Petit traité de la décroissance sereine* (Fayard, 2007); Jason Hickel, *Less is More: How Degrowth Will Save the World* (Penguin, 2021).

69. See, for example, Hickel and Kallis (n 6); John Bellamy Foster and others, 'Capitalism and the Curse of Energy Efficiency,' (2010) 62 *Monthly Review* 1.

70. For example, UN Environment Program, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication; a Synthesis for Policy Makers* (UNEP 2011); UNGA (n 5), SDG 8.4.

71. Hickel and Kallis (n 6).

human rights and ecological risks.⁷² The report also includes a ‘Low Energy Demand’ emissions scenario to keep temperature rises within 2°C. This approach eschews speculative technologies, relying on a 40% decline in energy use by 2050 to be achieved through reducing material consumption and improving energy efficiency. Hickel has termed this model a ‘degrowth scenario’, and suggested that it facilitates the move to 100% clean energy.⁷³ However, the political and economic implications of this are far reaching. Though growth has been a goal of both socialist and capitalist systems, it is inherent to capitalism with its imperative of expanding production.⁷⁴ Indeed, scholars, including some of those writing on degrowth, have criticised capitalist systems as inherently contradictory to planetary boundaries on the basis that production driven by capitalism’s growth imperative necessitates unsustainable levels of energy and material throughput.⁷⁵

The bearing of tensions between climate change and economic growth on international economic and environmental law has recently received scholarly attention,⁷⁶ yet there has been scant analysis of the implications for international human rights law.⁷⁷ Economic growth is not an explicit obligation on States under international human rights treaties. However, treaty bodies and some scholars have upheld its importance for human rights. Critiques have mostly focused on socioeconomic harms and inequalities under economic growth, although environmental questions are starting to receive attention. Given that economic growth is not an obligation and has had a mixed impact on human rights, and that climate change mitigation is now widely regarded as a human rights obligation, this article argues that it is necessary, and, indeed, that there is scope, under the framework of international human rights law, to recalibrate its approach to economic growth, as well as growth-based sustainable development.

3.1. REINTERPRETING ECONOMIC GROWTH UNDER INTERNATIONAL HUMAN RIGHTS LAW

International human rights treaties do not take a position on economic growth. Rather, they establish an overarching relationship between the realisation of ESC rights and financial resources. Article 2.1 of the ICESCR, the primary international treaty on ESC rights, requires States Parties to ‘take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant...’.

72. IPCC (n 19); Jason Hickel, ‘Degrowth: A Theory of Radical Abundance’ (2019) 87 *Real-World Economics Review* 54; Amnesty International, ‘The Impact of New Technologies for Climate Protection on the Enjoyment of Human Rights’ (*Amnesty International*, 2022) <<https://www.amnesty.org/en/wp-content/uploads/2022/05/IOR4055202022ENGLISH.pdf>> accessed 26 October 2023.

73. Hickel (n 72).

74. David Harvey, *The Limits to Capitalism* (Verso 1982); Allan Schnaiberg, *The Environment: From Surplus to Scarcity* (Blackwell 1982).

75. Hickel (n 68). However, some degrowth scholars such as Latouche have skirted this question. See John Bellamy Foster, ‘Capitalism and Degrowth: An Impossibility Theorem’ (2011) 62 *Monthly Review* <<https://monthlyreview.org/2011/01/01/capitalism-and-degrowth-an-impossibility-theorem/>> accessed 23 September 2023.

76. Louis Kotze and Sam Adelman, ‘Environmental Law and the Unsustainability of Sustainable Development: A Tale of Disenchantment and of Hope’ (2022) 3 *Law Critique* 1; Claiton Fyock, ‘What Might Degrowth Mean for International Economic Law? A Necessary Alternative to the (un)Sustainable Development Paradigm’ (2022) 12 *Asian Journal of International Law* 40.

77. An exception is Wouter Vandenhoe (n 8).

Economic growth has predominantly been viewed as conducive for the realisation of human rights. While resources for human rights are determined by various sources of revenue, demands on expenditure including debt financing, and monetary policy, Heinz points out that lower rates of economic growth can limit the resources available to fully realise human rights.⁷⁸ GDP growth has been used as an indicator to measure maximum available resources for ESC rights.⁷⁹ Economic growth underpinned the development of welfare states in post-war Europe,⁸⁰ which have been considered central to the realisation of ESC rights in these countries.⁸¹ Focusing on civil and political rights issues in 138 countries, Wade's empirical research identified an overall positive effect of economic growth on human rights, particularly for countries in the Global South.⁸² Sengupta, an economist who held the post of Independent Expert on the Right to Development, advanced a view, rooted in human development approaches, that human rights were both necessary for, and a function of growth.⁸³ Likewise, the UN Development Programme endorsed economic growth as a basis for the realisation of human rights.⁸⁴

Across various General Comments, a letter to States Parties, and Concluding Observations, the CESCR has consistently linked economic growth with the progressive realisation of ESC rights. General Comment No. 18 on the Right to Work, for example, clarified that States should adopt 'an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and under-employment'.⁸⁵ In a letter to States Parties following the Global Financial Crisis, the CESCR lamented that 'economic and social crises, and a lack of growth, impede the progressive realisation of ESC rights and can lead to retrogression in the enjoyment of those rights'.⁸⁶ In a handful of Concluding Observations issued to Global South or less affluent Global North States, the CESCR endorsed economic growth as important *ipso facto*, without specifically linking it to the realisation of human rights.⁸⁷ Based on their empirical study of the CESCR's outputs on economic growth, Petel and Vander Putten contend that, while the CESCR falls short of taking an overarching explicit position on economic growth, it seems to view economic growth as 'a means to achieve progress in the enjoyment of ESC rights'.⁸⁸

78. James Heinz, 'Inequality, Neoliberalism and Human Rights' in Gillian MacNaughton and Diane Frey (eds), *Economic and Social Rights in a Neoliberal World* (CUP 2018) 27, 35.

79. Eitan Felner, 'Closing the 'Escape Hatch': A Toolkit to Monitor the Progressive Realization of Economic, Social, and Cultural Rights' (2009) 1 *Journal of Human Rights Practice* 402.

80. Francis Castles and others, 'Introduction' in Francis Castles and others (eds), *The Oxford Handbook of the Welfare State* (OUP 2010).

81. Though growth of welfare states coincided with the recognition of ESC rights under international law, it was not a result of it. See, for example, Alex Kirkup and Tony Evans, 'The Myth of Western Opposition to Economic, Social, and Cultural Rights?: A Reply to Whelan and Donnelly' (2009) 31 *Human Rights Quarterly* 221.

82. Wade Cole, 'Too Much of a Good Thing? Economic Growth and Human Rights, 1960 to 2010' (2017) 67 *Social Science Research* 72.

83. Sengupta (n 7).

84. UN Development Programme, *Human Rights and Human Development* (UNDP 2000).

85. CESCR, 'General Comment No. 18 on the Right to Work' (6 February 2006) UN Doc. E/C.12/GC/18.

86. UN Office of the High Commissioner, Letter dated 16 May 2012 addressed by the Chairperson of the CESCR to States Parties to the ICESCR, (16 May 2012) UN Doc. CESCR/48th/SP/MAB/SW.

87. See, for example, CESCR, 'Concluding Observations on India' (8 August 2008) UN Doc. E/C.12/IND/CO/5 (2008), para 60; and CESCR, 'Concluding Observations on Cameroon' (23 January 2012) UN Doc. E/C.12/CMR/CO/2-3, para 32.

88. Petel and Vander Putten (n 7) 59.

However, the impact of economic growth on climate change has largely been overlooked in the interpretive outputs of treaty bodies. As discussed in Section 2, the treaty bodies have made far-reaching recommendations on climate change mitigation, including for measures with an economic impact, such as scaling down fossil fuel, and scaling up the production of renewable energy. Nevertheless, these recommendations stop short of engaging with the scientific and social scientific opinion that economic activity in Global North States could be reduced and restructured to meet the targets of the Paris Agreement. They also fall short of exploring whether and how this reduction and restructuring could be achieved while also safeguarding human rights.

Scholars are, however, beginning to consider this question. Hickel has argued that human rights and ecological well-being would require imposing a cap on global growth and the redistribution of income between affluent and impoverished populations within and across countries.⁸⁹ Donald has argued that a human rights-based economy is one that moves beyond a mainstream economics approach to address ecological economics and human-centred measures of success.⁹⁰ In expressing concern that ‘our fixation on economic growth is exhausting the planet and its people’, the current UN Special Rapporteur on Extreme Poverty and Human Rights recently committed to look at post-growth approaches within his mandate.⁹¹ Vandenhole has noted that if ecological economists are correct, then climate change mitigation obligations under international law, including international human rights law, may require States in the Global North to reduce their economic output (while protecting human rights, including through robust equitable redistribution).⁹²

These climate-based imperatives to reinterpret economic growth are part of a broader, emergent field of human rights critique of economic growth. Notwithstanding that economic growth can generate resources to realise human rights, such growth has often been inequitable, often favouring the affluent. It has at times been achieved at the expense of human rights, equality and non-discrimination, for instance gender-based inequalities such as the exploitation of women, and under conditions of racial capitalism including exploitative colonial and postcolonial economic relations.⁹³ De Schutter noted that decisions made in the interests of economic growth, including tax reductions, can remove the source of public revenue for social protection and public services.⁹⁴ Indeed, the CESCR has affirmed that budgets and measures to stimulate economic growth should guarantee rights under the ICESCR without discrimination,⁹⁵ and raised concerns when States failed to realise human rights equitably in periods of economic growth.⁹⁶ Increasingly, human rights scholars have expressed concern about the human rights implications

89. Jason Hickel, ‘The Imperative of Redistribution in an Age of Ecological Overshoot: Human Rights and Global Inequality’ (2019) 10 *Humanity* 416.

90. Kate Donald, *A Rights-Based Economy: Putting People and Planet First* (Center for Economic and Social Rights 2020).

91. De Schutter (n 8).

92. Vandenhole (n 8) 652.

93. Margot Salomon, ‘Emancipating Human Rights: Capitalism and the Common Good’ (2023) 38 *Leiden Journal of International Law* 1; Carmen Gonzalez and Athena Mutua, ‘Mapping Racial Capitalism: Implications for Law’ (2022) 2 *Journal of Political Economy* 127.

94. De Schutter (n 8).

95. CESCR, ‘General Comment No. 20 on Non-discrimination in Economic, Social and Cultural Rights’ (2 July 2009) UN Doc. E/C.12/GC/20, para 38.

96. Petel and Vander Putten (n 7).

of vast economic inequalities, which sustain extreme poverty and extreme wealth.⁹⁷ Half of the world's wealth now belongs to one per cent of its population, while half the world's population live in poverty and without access to their human rights.⁹⁸ While the CESCR has not issued a robust response to this serious state of affairs, the Special Rapporteur on Extreme Poverty and Human Rights is among those advocating for a shift in focus towards reducing inequality, rather than pursuing economic growth 'as if a large GDP were some sort of a magic wand'.⁹⁹

These environmental and socioeconomic critiques raise the question of whether there is scope for a revised interpretation of growth within the framework of international human rights treaties. Such reinterpretation should be feasible, particularly considering that the ICESCR does not explicitly endorse growth. In regard to political and economic systems, the CESCR has clarified that it considers the ICESCR:

neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected.¹⁰⁰

This neutrality should not shut out economic and political systems that eschew growth, so long as they are democratic and respect human rights. The CESCR's seemingly 'neutral' position on neoliberal governance stirred frustrations within the human rights community. Some scholars have suggested that, given the harms inflicted by neoliberal policies on ESC rights, the CESCR's purported neutrality may, in fact, reflect a bias.¹⁰¹ Yet the CESCR's recent decisions indicate a modest shift toward exploring alternatives to such orthodox economic approaches. For example, in *Maribel Viviana López Albán v. Spain*, the CESCR challenged the legal protection of property (a key tenet of capitalism and neoliberalism) where it compromised the right to housing. The CESCR held that a proportionality assessment should be employed to weigh the protection of private property of legal persons against the human right to housing in the context of an eviction, affirming that this:

entails examining not only the consequences of the measures for the evicted persons but also the owner's need to recover possession of the property. This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions, as in the current case.¹⁰²

Salomon has hailed this decision, which found Spain had incorrectly prioritised the legal protection of the property owner over the rights of the victims, as a nod towards a recognition of 'transformative

97. See, Philip Alston, 'Extreme Inequalities as the Antithesis of Human Rights' (*openDemocracy* 27 October 2015) <<https://www.opendemocracy.net/en/openglobalrights-openpage/extreme-inequality-as-antithesis-of-human-rights/>> accessed 16 October 2023; Vandenhoe (n 8).

98. Alston (n 97).

99. De Schutter (n 8).

100. CESCR, 'General Comment No. 3: The Nature of states Parties Obligations' (14 December 1990) UN Doc. E/1991/23, para 8.

101. See, for example, Paul O'Connell, 'On Reconciling Irreconcilables: Neo-Liberal Globalisation and Human Rights' (2007) 7 *Human Rights Law Review* 483; Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard 2018).

102. *Maribel Viviana López Albán v. Spain*, Communication No. 37/2018 (11 October 2019) UN Doc. E/C.12/66/D/37/2018, para 11.5.

alternatives'.¹⁰³ This decision raises the question of whether the CESCR, or other treaty bodies, could adopt a less conventional stance on economic growth, a fundamental pillar of capitalism, particularly in relation to the Global North, if such growth disproportionately benefits the wealthy, shows a weak correlation with the realisation of ESC rights,¹⁰⁴ and is foreseeably detrimental to human rights including by way of its contribution to climate change. Although this seems unlikely, especially considering the CESCR's long-term, ostensible neutrality on economic systems, the CESCR's recent decision opens a door of possibility. The CESCR's upcoming General Comment on sustainable development, or its Concluding Observations on reports from Global North States Parties, could serve as a forum for such a clarification. CESCR could draw on climate science, ecological economics, and degrowth proposals as a counterpoint to orthodox economics.

3.2. REINTERPRETING SUSTAINABLE DEVELOPMENT UNDER INTERNATIONAL HUMAN RIGHTS LAW

Climate change mitigation obligations also have implications for the relationship between human rights and sustainable development. The 2030 Agenda, which sits at the heart of the international development agenda, is guided by the concept of sustainable development - meeting 'the needs of the present without compromising the ability of future generations to meet their own needs', to be achieved in three domains of economic development, social development, and environmental protection.¹⁰⁵

Framed by a commitment to 'take urgent action to combat climate change and its impacts,' SDG13 explicitly links with and defers to the UNFCCC as the 'primary forum for negotiating the global response to climate change'.¹⁰⁶ The Paris Agreement, which was adopted shortly after the 2030 Agenda, is considered part of the "urgent action" commitment that frames SDG13.¹⁰⁷ This alignment is reinforced by the 2030 Agenda's cross-cutting commitment to implementation 'in a manner that is consistent with the rights and obligations of states under international law',¹⁰⁸ which would include the Paris Agreement and international human rights law. However, economic growth is a core principle mentioned 13 times throughout the 2030 Agenda. It frames SDG8, a commitment to 'sustained, inclusive and sustainable economic growth', while the 2030 Agenda also commits to green growth, an approach widely recognised to be in contradiction with its climate change commitments.¹⁰⁹

Human rights have historically been sidelined in international development. However, the 2030 Agenda gives prominence to human rights, asserting that it is grounded in international human rights treaties, and that the 17 SDGs 'seek to realise the human rights of all'.¹¹⁰ The human rights community has recognised synergies between the SDGs and human rights, with normative critiques primarily expressing concern about the potential marginalisation of certain human rights issues under the SDG's narrower approach compared to the broader scope of human

103. Salomon (n 93).

104. Kate Pickett and Richard Wilkinson, *The Spirit Level: Why Equality is Better for Everyone* (Bloomsbury Press 2009).

105. UNGA Report of the World Commission on Environment and Development 'Our Common Future' (4 August 1987) UN Doc. A/42/427; UNGA (n 5), Preamble.

106. UNGA (n 5).

107. Alan Boyle, 'Climate Change, Sustainable Development and Human Rights' in Markus Kaltenborn and others (eds), *Sustainable Development Goals and Human Rights* (Springer 2019).

108. UNGA (n 5), para 18.

109. Hickel (n 3).

110. UNGA (n 5), Preamble and para 10.

rights. Yet the SDGs are not perceived to actively obstruct human rights.¹¹¹ Contrary to the aforementioned tensions between economic growth and climate change mitigation under sustainable development, the CESCR has held that sustainable development has ‘close linkages with ESC rights’, and endorsed its ‘balanced’ approach.¹¹² In drafting a General Comment on sustainable development, it remains to be seen how the CESCR will navigate what scholars such as Hickel and Kallis have suggested are intractable tensions between economic growth and climate change,¹¹³ including whether it will continue to endorse sustainable development, or opt to scrutinise it, potentially paving the way for post-growth alternatives that prioritise human rights.

4. REALISING HUMAN RIGHTS WITHIN THE CLIMATE CRISIS: LEARNING FROM DEGROWTH

Scepticism regarding the efficacy of growth-based sustainable development in averting cataclysmic climate change and other dimensions of ecological breakdown has grown among scholars, activists, and policy-makers, who have increasingly advanced alternative approaches to social and environmental well-being that are decoupled from growth. Raworth’s “Doughnut Economics” is guided by a social floor, which she argues could be normatively established in line with international human rights standards, together with an ecological ceiling to identify a socially just and environmentally safe space for humanity that avoids overshooting planetary boundaries.¹¹⁴ Other ‘post-development’ approaches, including Buen Vivir [living with harmony between humans and with nature], Degrowth and Ecological Swaraj [self-rule], draw inspiration from indigenous peoples’ worldviews, Global South epistemologies, or alternative socioecological traditions and philosophies to advance symbiotic approaches to planetary and human well-being.¹¹⁵ These proposals, along with multiple others, are united in seeking an end to the environmental and social harms of hegemonic, globally imposed, anthropocentric and neo-colonial modes of development based on growth, consumption, capitalist modes of production, and exploitation of the environment.¹¹⁶ The visions transgress the binary notions of ‘developed’ and ‘developing’, and the classical, Eurocentric understanding of unidirectional, linear progress, which persists in the 2030 Agenda. In some cases, these approaches have framed domestic laws or local government planning. For example, the Constitution of Ecuador commits, in its Preamble, ‘to build a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living [*buen vivir*]’, while more than 40 local and regional governments worldwide have turned to Doughnut Economics to support a thriving future.¹¹⁷

111. Markus Kaltenborn and Wouter Vandenhoe, ‘The SDG Agenda and Human Rights’ in Bård A. Andreassen (ed), *Research Handbook on the Politics of Human Rights Law* (Elgar 2023) 215, 232.

112. CESCR, ‘Statement in the context of the Rio+20 Conference on “The Green Economy in the Context of Sustainable Development and Poverty Eradication”’ (4 June 2012) UN Doc. E/C.12/2012/1, para 3.

113. Hickel (n 3); Hickel and Kallis (n 6).

114. Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a Twenty First Century Economist* (Cornerstone 2017).

115. Ashish Kothari and others, *Pluriverse: A Post-Development Dictionary* (Tulika Books 2019).

116. Arturo Escobar, *Encountering Development* (Princeton University Press 1995).

117. Doughnut Economics Action Lab, ‘Cities and Regions’ (*Doughnut Economics Action Lab*, n.d.) <<https://doughnuteconomics.org/themes/1>> accessed 1 September 2023.

With international law having failed to mitigate, and standing accused of constituting, the climate crisis,¹¹⁸ critical legal scholars are beginning to draw on these alternative socioecological approaches to reimagine international law, including environmental and economic law, within planetary boundaries.¹¹⁹ Whilst recognising that many such approaches can support the interpretation of human rights law within planetary boundaries, this section focuses on degrowth as a case study.

Donald has suggested that degrowth and other development alternatives may support a transition to a human rights-based economy compatible with environmental sustainability.¹²⁰ However, neither degrowth proponents nor human rights scholars have given adequate attention to the human rights implications of degrowth. Vandenhole appears to be alone in exploring degrowth and human rights in any depth, asking what if ecological economists got it right and how could the consequences of degrowth be factored into the ‘conceptual analysis and operationalisation of ESC rights’ at the domestic level? Vandenhole suggests that the consequences of degrowth would be ‘considerable’ for human rights, yet his article does not proceed to answer these questions or elaborate on these consequences in relation to the domestic actions of States in the Global North, rather focusing on implications in the context of development cooperation.¹²¹

This section will respond to Vandenhole’s question, presenting an analysis that focuses on degrowth in relation to the domestic policies of States in the Global North, for several reasons. First, populations in the Global North are, currently and historically, the primary contributors to climate change and ecological breakdown. Second, under international human rights and climate change law, these States have obligations to adopt economy-wide absolute emissions reduction targets. Finally, the degrowth approach has been developed with the Global North context in mind. This article asserts that degrowth in Global North States provides a pathway for the realisation of human rights within planetary boundaries.

However, there are ongoing debates about the global applicability of degrowth. Hickel has argued for a degrowth focus for the Global North: ‘throughput should decline in the North to get back within sustainable levels while increasing in the South to meet human needs, converging at a level consistent with ecological stability and universal human welfare’.¹²² In contrast, Gerber and Raina argue for redistribution instead of growth in the Global South. They contend that growth in the Global South is unsustainable and that class-based wealth inequalities, with a global economic elite at its apex, transcend national borders.¹²³ Deva and Anand propose a ‘differentiated degrowth model’ that accommodates different levels and conceptions of development across the world and which is aligned with ‘common but differentiated responsibilities’ and the right to development. Vandenhole also suggests that post-growth approaches are worthwhile longer-term goals of a human rights-based approach to development in the Global South.¹²⁴ The

118. Eliana Cusato and others, ‘Symposium Introduction: Critical Perspectives on Global Law and the Environment’ (2022) 12 *Asian Journal of International Law* 1.

119. Kotze and Adelman (n 76); Fyock (n 76).

120. Donald (n 90).

121. Vandenhole (n 8)

122. Jason Hickel, ‘The Anti-Colonial Politics of Degrowth’ (2021) 88 *Political Geography* 1.

123. Julien-François Gerber and Rajeswari Raina, ‘Post-Growth in the Global South? Some Reflections from India and Bhutan’ (2018) 150 *Ecological Economics* 353.

124. Surya Deva and Pushkar Anand, ‘A Global South Perspective on Labour Rights and Supply Chains for a Post-Growth World’ in Nicolas Bueno and others (eds) *Labour Law Utopias: Post-Growth and Post-Productive Work Approaches* (OUP, forthcoming 2024); Vandenhole (n 8) 659.

implication is that elements of degrowth, as well as other socioecological alternatives to mainstream development, can support the interpretation of human rights across varying countries and cultural contexts in the light of planetary boundaries. Whilst acknowledging this approach, a global analysis is beyond the scope of this article.

Degrowth proposals remain at a fairly general level of goals, principles, and governance proposals. In Section 4.1, this article provides a short introduction to the background and goals of degrowth, as well as its underlying principles, which can be argued to be mutually reinforcing and often overlap with those underlying human rights. Section 4.2 examines the (albeit generalised) substance of key degrowth governance proposals for social and economic life at the domestic level in the Global North and consider what, if anything, they have in common with human rights, particularly ESC rights.

4.1. DEGROWTH AND THE SYNERGIES OF ITS GUIDING PRINCIPLES WITH HUMAN RIGHTS

The term degrowth, coined in 1972 by political ecologist Andre Gorz, has been endorsed by a wide variety of social movements and environmental activists.¹²⁵ More recently, it has entered mainstream discussions in governance institutions, as it is taken more seriously by scientists and policy makers who are alarmed by the failures of mainstream climate change mitigation responses to date. In its 2022 report, the IPCC mentioned degrowth several times, including as an alternative development perspective and approach for sustainability.¹²⁶

Building on ecological economics theories that posit that the economy exists within the Earth's biosphere and is limited by its energy and materials resources ('throughput'),¹²⁷ degrowth proposals call for 'transforming societies to ensure environmental justice and a good life for all within planetary boundaries'.¹²⁸ The proposed transformation centres on the abolition of growth as a social objective, and the reduction of production and consumption in Global North countries, which are largely responsible for environmental breakdown.¹²⁹

However, degrowth should not be misunderstood as negative GDP growth, that is, recession. This is an important distinction for ESC rights considering that recessions and government policy responses, including austerity, have often led to retrogressive measures against ESC rights.¹³⁰ In contrast, 'degrowth' signifies a desired direction towards ecological sustainability, reduced inequality and improved well-being. This is to be achieved through reducing economic activity that is ecologically harmful and socially less necessary (such as the production of private transport, arms, large cars including SUVs, beef, and advertising), whilst promoting more equitable wealth distribution within and between countries, public service investment, redistribution of income, and upholding labour protections to maintain or improve standards of living.¹³¹ Degrowth in the Global North aims to create ecological space for States in the Global South to

125. Kothari (n 11) 369.

126. IPCC (n 3), see, for example, 178, 361, 383, 524, 1736, 1767, 1875.

127. Herman Daly, *Towards a Steady State Economics* (W.H. Freeman & Co, Ltd. 1973).

128. Degrowth, 'Degrowth' (*Degrowth*, n.d.) <<https://degrowth.info/degrowth>> accessed 1 September 2023.

129. Giorgos Kallis and others, 'Introduction' in Giorgos Kallis and others (eds) *Degrowth: A Vocabulary for a New Era* (Routledge 2015) 3.

130. Diane Desierto, 'Austerity Measures and International Economic, Social, and Cultural Rights' in Evan Criddle (ed) *Human Rights in Emergencies* (CUP 2016) 241-276.

131. Jason Hickel, 'What Does Degrowth Mean? A Few Points of Clarification' (2021) 18 *Globalizations* 1105, 1108.

pursue their own development trajectories, whether through growth or alternative approaches to socioenvironmental wellbeing.¹³²

Human rights are not discussed in the narratives of degrowth. Nevertheless, degrowth is underpinned by principles and goals such as living within planetary boundaries, social justice, equity, solidarity, and participation that resonate with some of the fundamental principles of human rights under international human rights law, despite slightly differing normative framings and emphases of the two fields.

Degrowth and international human rights law both commit to mitigating climate change. However, while degrowth proposes a significant reduction in production and consumption in the Global North countries to alleviate pressure on our planetary boundaries, official interpretations of international human rights law have endorsed economic growth, including green growth, and have yet to meaningfully engage with critiques of this approach and explore synergies with planetary boundaries.¹³³ Whilst now requiring climate mitigation, international human rights law has evolved without adequate attention to ecological limits. There has been limited attention to factors such as economic growth and capital accumulation that drive the climate crisis and other forms of planetary breakdown and whether such root causes may come within the purview of States' human rights obligations.¹³⁴ Nevertheless, the CRC's General Comment No. 26 shifts this approach in some respects. It calls for urgent action to avoid reaching climate change 'tipping points'.¹³⁵ Tipping points are thresholds that, if breached, will lead to large and irreversible changes to the Earth's climate system. The CRC also moved to address the environmental impacts of consumption and production, and, while not calling explicitly for downscaling, stated that 'the rights to adequate housing, food, water and sanitation should be realised sustainably, including with respect to material consumption, resource and energy use and the appropriation of space and nature'.¹³⁶ Although the CRC's position should not be assumed to be universally representative of the entire field of international human rights law, when combined with other interventions by the Special Rapporteur on Extreme Poverty and Human Rights and scholarly contributions, it suggests a long-overdue shift towards contemplating human rights within the context of, and in terms of a bidirectional relationship with, the natural world and its limits.¹³⁷

Degrowth proposes social arrangements for the downscaling of ecologically harmful production and consumption in an equitable way to live within planetary boundaries. It addresses the inequalities associated with the causes and consequences of climate change, promoting a distributional approach to downscaling that embraces equity, redistribution, and social justice over growth as fundamental social values.¹³⁸ Key strategies for achieving equitable wellbeing include reducing economic inequality within and between countries, ensuring fair distribution of socioeconomic opportunities, and improving access to public services. These proposals are grounded in research that suggests equality and public investment have a stronger correlation with wellbeing compared to wealth in high-income

132. Kallis (n 129).

133. Jonathan Ensor and Eric Hoddy, 'Securing the Social Foundation: A Rights-based Approach to Planetary Boundaries' (2021) 7 *Earth System Governance* 1.

134. Usha Natarajan, 'Who Do We Think We Are? Human Rights in a Time of Ecological Change' in Usha Natarajan and Julia Dehm (eds) *Locating Nature: Making and Unmaking International Law* (CUP 2022) 200, 210.

135. CRC (n 40), paras 96 and 98(e).

136. *ibid* para. 46.

137. See, for example, *ibid*, and notes 8, 89 and 133.

138. Kallis (n 129).

countries.¹³⁹ The concepts of equity and social justice, embedded in international human rights law through equality and non-discrimination principles, have recently garnered the attention of human rights scholars addressing economic inequalities. Ensor and Hoddy suggest that international human rights norms could provide a normative basis to define, and legally underpin, social equity in environmental governance of the unsustainable use of planetary resources.¹⁴⁰

Degrowth proposals involve limiting emissions in the Global North to reduce the threat of climate change and ecological breakdown everywhere, and for redistribution of income within and between countries to improve the standard of living, including in the Global South. Their corresponding guiding principles of solidarity and reciprocity resonate with the Universal Declaration on Human Rights' (UDHR), which recognises that 'everyone has duties to the community in which alone the free and full development of his personality is possible', and emphasises the 'right to a social and international order in which rights and freedoms can be realised for all'.¹⁴¹ These principles also align with the obligations of international cooperation and assistance for ESC rights under Article 2(1) of the ICESCR, as well as the extra-territorial obligations of high-emitting States to take action to prevent foreseeable climate change harms.¹⁴² Many human rights are framed individually. However, the rights to a healthy environment and development are sometimes referred to as solidarity rights. Such rights embody concepts of burden sharing and global responsibility, bringing individuals together 'in a finite world'.¹⁴³ This framing has much in common with the principles underlying degrowth.¹⁴⁴

Democracy and participation, which underpin degrowth proposals and their promotion of voluntary change, are closely connected to the right to take part in the conduct of public affairs. Participation, along with equality, non-discrimination, and accountability, also constitutes a key element of a human rights-based approach. Participation necessitates amplifying the voices of impoverished and other marginalised individuals and groups in deliberative processes, providing a foundation to challenge social inequalities, climate-based human rights abuses that disproportionately affect the most vulnerable, and ensuring that no one is left behind.

Beyond upholding democracy, degrowth proposals do not prescribe a specific approach for implementing a large-scale degrowth transition. Indeed, some degrowth scholars have criticised the movement for its limited engagement with the State as a potential force for change.¹⁴⁵ Nonetheless, policymakers in various countries are deliberating proposals for degrowth, and in theory, such proposals could be adopted. However, political pressures would likely present significant challenges. Insofar as degrowth aligns with human rights (which I argue it broadly does), the legal foundations of human rights law, as well as its global human rights activist movement, could potentially facilitate transitions to degrowth.¹⁴⁶ While the transformative potential of human rights law should not be overstated, it has been widely utilised by counter-hegemonic movements to leverage change.

139. Pickett and Wilkinson (n 104).

140. Ensor and Hoddy (n 133).

141. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), Articles 28 and 29.

142. CRC (n 40).

143. Karel Vasak, 'For the Third Generation of Human Rights: The Rights of Solidarity' Inaugural Lecture to the Tenth Study Session of the International Institute of Human Rights, Strasbourg, 2-27 July 1979.

144. Vandenhole (n 8) 669.

145. Giacomo D'Alisa and Giorgos Kallis, 'Degrowth and the State' (2020) 169 *Ecological Economics* 1.

146. Caroline Dommen, 'Human Rights Economics' (2023) 45 *Human Rights Quarterly* 205, 236.

4.2. SOCIAL AND ECONOMIC TRANSFORMATION IN THE GLOBAL NORTH: WHAT ARE THE HUMAN RIGHTS IMPLICATIONS OF DEGROWTH'S 'GOOD LIFE'?

Living within planetary boundaries would require social transformation in Global North countries, with degrowth proposing a 'good life' centred around concepts of voluntary simplicity, relationships of sharing, care, conviviality, and the commons as a foundation for sustainable living. Although these concepts are not explicitly reflected in international human rights norms, substantive degrowth proposals align with and do not significantly deviate from the obligations imposed on Global North States by international human rights law. However, Vandenhole suggests that tensions may arise because international human rights mechanisms and scholars continue to take mainstream economic theory for granted, particularly in terms of interpreting the obligation of 'progressive realisation' of ESC rights under Article 2(1) of the ICESCR.¹⁴⁷ This article concurs with Vandenhole's assessment about these challenges. At the same time, a shift in interpretive perspective may be considered a necessary rebalancing to mitigate severe long-term climate human rights threats, including those affecting the rights of children and future generations, aligning with States' mitigation obligations under international human rights law. Indeed, degrowth proposes reforms that could help protect human rights if Global North countries take meaningful action towards meeting the mitigation targets under the Paris Agreement.

4.2.1. VOLUNTARY SIMPLICITY

Degrowth proposes a planned reduction of energy and resource use from environmentally harmful sectors that are linked with excessive consumption and generate limited social benefit. This would particularly affect wealthier populations, and it is noteworthy that the richest one per cent of the world's population is responsible for twice as much carbon emissions as the 3.1 billion people who make up the poorest half of the world's population.¹⁴⁸ In reducing wasteful and resource-intensive consumption, degrowth redefines well-being in terms of frugal abundance, a simple life, and voluntary simplicity. Degrowth movements promote this as liberating, rather than restraining and limiting.¹⁴⁹ The idea of upholding simplicity is based on the notion that humans can enjoy meaningful and satisfying lives without excessive consumption. Indeed, GDP is poorly correlated with human development above a certain level. For example, Costa Rica has the same life expectancy as the US, with only 20% of its GDP per capita.¹⁵⁰ Degrowth proposals are also focused on maintaining or improving living standards through 'growing' sectors, such as public healthcare, social care, clean energy, regenerative agriculture, and environmentally restorative forms of decent work.¹⁵¹ These growth sectors underpin ESC rights, such as health, food, and work. Growth in these sectors is to be achieved through redistribution of financial resources, including proposals for wealth and carbon taxes.¹⁵² This model resonates with calls for redistributive financing to make available the maximum resources

147. Vandenhole (n 8).

148. Oxfam, *Confronting Carbon Inequality* (Oxfam 2020) 2.

149. Kallis (n 129).

150. Hickel (n 72) 58.

151. *ibid.*

152. *ibid.*

needed for the realisation of human rights.¹⁵³ Furthermore, to prevent unemployment and poverty from economic downsizing, degrowth proposals embrace several measures that could protect the rights to, and in, work, such as a living wage, universal basic income schemes, shortening the work week, and redistributing labour into cleaner and socially important industries.¹⁵⁴ Some of these measures have also been raised by human rights scholars as creative responses to economic insecurity.¹⁵⁵

Article 11(1) of ICESCR recognises ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, *and to the continuous improvement of living conditions*’.¹⁵⁶ The meaning of ‘living conditions’ under this article has been given limited attention, but Skogly has suggested that the concept embraces international human rights norms, including rights to food, water, housing, rest and leisure, personal security and working conditions.¹⁵⁷ The CESCR has held that ‘a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States Parties, and in the absence of accompanying compensatory measure’ would be inconsistent with obligations under the ICESCR.¹⁵⁸ By contrast, degrowth proposals seek to target consumer production and lifestyles, rather than an adequate standard of living and living conditions, which it they seek to maintain or improve.

If implemented, degrowth would likely involve limitations on the continuous improvements of living conditions for some people, particularly the wealthy. However, the CESCR has expressed particular concern where government action interferes with the minimum essential levels of ESC rights, or discriminates against marginalised groups.¹⁵⁹ Degrowth’s proposed restrictions on production and consumption would thus appear to be well clear of the minimum core of the right to an adequate standard of living, and, in addressing the lifestyles of socio-economically advantaged groups, do not raise overt concerns in terms of the realisation of human rights on the basis of non-discrimination and equality.

Moreover, the ICESCR provides that States may subject rights to limitations, in accordance with law, ‘only for the purpose of promoting the general welfare in a democratic society’.¹⁶⁰ Any such limitation would need to fulfil certain conditions, including necessity to protect rights and proportionality, that is, other policies, or a failure to act, would be more detrimental to ESC rights.¹⁶¹ Considering the detrimental impacts of growth-based approaches, degrowth in the Global North could be considered as designed to promote general welfare worldwide, necessary to protect

153. Radhika Balakrishnan and others, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights* (Routledge 2016), Chapter 4.

154. Frank Adloff, *Degrowth Meets Convivialism (Degrowth, 1 August 2008)* <<https://degrowth.info/en/blog/degrowth-meets-convivialism-pathways-to-a-convivial-society>> accessed 1 September 2023.

155. On universal basic income, see Human rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights Philip Alston (22 March 2017) UN Doc. A/HRC/35/26.

156. ICESCR (n 10), Article 11. Own emphasis added.

157. Signun Skogly, ‘The Right to the Continuous Improvement of Living Conditions and Human Rights of Future Generations – A Circle Impossible to Square?’ in Goldblatt and Hohmann (eds) *The Right to the Continuous Improvement of Living Conditions: Responding to Complex Global Challenges* (Hart 2021) 147, 150.

158. CESCR, ‘General Comment No. 4: The Right to Adequate Housing’ (13 December 1991) UN Doc. E/1992/23.

159. CESCR, ‘Statement on Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights’ (22 July 2016) UN Doc. E/C.12/2016/1, para 4.

160. ICESCR (n 10) Article 4.

161. CESCR (n 159).

human rights from climate change, and, overall, less detrimental to human rights than prevailing growth-based approaches. In an approach which mirrors degrowth proposals, Skogly has suggested that, in the light of finite nature resources and taking into consideration the rights of future generations, there may be a ceiling on ‘the right to a continuous improvement of living conditions’. Skogly contends that this would likely be set at a level which will mostly affect people whose lifestyle ‘has reached the level of adequacy and more’.¹⁶² In its General Comment No. 26, the CRC highlighted that States should strike a ‘reasonable balance’ between appropriate levels of environmental protection and other social goals, but that States are constrained by the need to ‘set and enforce environmental standards that protect children from such disproportionate and long-term effects’.¹⁶³ Degrowth and Skogly’s proposals provide an approach to navigate this challenging balancing act in a reasonable manner.

4.2.2. CONVIVIALITY, CARE AND THE COMMONS

Conviviality, care and the commons have some, but limited, conceptual links with ESC rights, and require further research in terms of synergies and tensions. Under degrowth proposals, care includes action performed for the welfare of the community, including oneself, family members, friends, and the neighbourhood – and requires attention to gender equality and non-discrimination. Care work is fundamental to human rights and well-being. However, divisions in responsibility have often perpetuated gender inequalities, and care work has often been carried out by unpaid or poorly paid labour. Degrowth’s attention to gender equality in care resonates with the human rights norms that require States to address inequalities and discrimination that underpin these inequitable caring relationships, including in employment, through education that understands maternity as a social function and promotes common responsibilities of men and women in children’s upbringing, and through participation of women in policy making.¹⁶⁴

The shared management of resources (commons) approach has mostly been promoted under international human rights law through discussions on land, food systems, and the rights of indigenous peoples and peasants. With 2.5 billion people worldwide relying on lands managed under customary, community-based, tenure systems, a right to the commons has been articulated by social movements resisting commodification and appropriation of land by State and non-State actors.¹⁶⁵ International human rights instruments concerning indigenous peoples, peasants and others rural populations include the rights to maintain communal, commons-based, or a collective ownership approach to land and resources.¹⁶⁶ Yet explorations of commons-based approaches to sustainable use of other resources are emerging, for example, seeds, water, or even digital resources. Awareness of how the commons approach can realise human rights in the context of environmental

162. Skogly (n 157) 153.

163. CRC (n 40), para 73.

164. Sandra Fredman, *Working Together: Human Rights, Sustainable Development Goals and Gender Equity* (British Academy 2018) 16.

165. Margot Salomon (n 93).

166. UNGA, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (2 October 2007) UN Doc. A/RES/61/295; UNGA, ‘United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas’ (21 January 2019) UN Doc. A/RES/73/165.

challenges is also developing.¹⁶⁷ When it comes to conviviality, this approach embraces notions of living together and the quality of social relations as a goal, including respecting equal dignity, solidarity, and individual difference. This resonates with the human rights principles of dignity, equality, and non-discrimination.

The emphasis on commons, conviviality, and relationships of care finds particular resonance with the principle of solidarity under international human rights law. It also reflects communal, group-oriented, approaches to human rights, and the notion that individuals have duties to the community as well as rights, as described in Section 4.1. However, these approaches are more often promoted in practice in laws, policies and scholarship from Global South countries, in binding African regional human rights treaties, and in the framing of soft law international instruments, including on indigenous peoples' and peasants' rights, compared to the more individualistic approach that predominates within law in Global North countries and binding international human rights treaties.¹⁶⁸ Some human rights scholars have urged further exploration of such approaches in terms of sustainability. For example, Salomon has argued that indigenous peoples' rights and peasants' rights provide human rights-based sustainable alternatives to mainstream, neoliberal approaches to rights under international law. She also points to the enormous cultural challenges and biases that would problematise this endeavour, given prevailing views that it is impossible to scale up such approaches in an era of hypermodernity, and misconceptions of such lifestyles as quaint or backwards.¹⁶⁹

5. CONCLUSION

Recent interpretations of international human rights law clarify its imperative to address climate change through both adaptation and mitigation measures, with commitments under the Paris Agreement serving as interpretive benchmarks. This suggests that States must move towards protecting people against harms to their human rights under climate change, which requires addressing its structural causes, including economic growth. Considering the widespread scepticism surrounding the viability of green growth, the implication is that States, particularly those in the Global North with their disproportionate climate footprint, would need to transition to economic and social models without growth if they are to respect the limits of the planet and avoid perpetrating escalating human rights violations linked to climate change.

This also means that the international human rights community should reassess its views on economic growth and the growth-based 2030 Agenda for Sustainable Development. As the CESCR drafts a General Comment on sustainable development and ESC rights, it remains to be seen whether it will recognise that the present framing of sustainable development lacks balance. Additionally, it remains uncertain if the CESCR will explore alternative approaches, such as degrowth, which could be compatible with human rights or even be necessary to protect ESC rights whilst living within planetary boundaries. Although degrowth involves certain challenges

167. Stefania Errica and Priscilla Claeys, 'Human Rights and the Commons: Exploring Approaches to the Governance of Land and Natural Resources beyond Indigenous Peoples' Rights. The Case of Peasants' (2020) 27 *International Journal on Minority and Group Rights* 1.

168. Makau Mutua, 'The Transformation of Africa: A Critique of the Rights Discourse' in Felipe Gomez Isa and Koen de Feyter (eds) *International Human Rights Law in a Global Context* (University of Deusto 2009) 899, 917.

169. Margot Salomon, 'Culture as Alternative to Sustainable Development' (*TWAILR* 7 July 2022) <<https://twailr.com/culture-as-an-alternative-to-sustainable-development/>> accessed 1 September 2023.

that require greater exploration from a human rights perspective, it appears to meet the challenge of striking a fairer balance than the status quo. This extends to a redistributive approach that would allow for realising human rights on the basis of equality, non-discrimination within countries, and equity between countries and between generations in the context of climate change. The human rights community can learn from such visions in proposing alternatives to the status quo and must think in more concrete terms about how to position human rights within them. Now half-way through the 2030 Agenda era, the human rights community must start to explore alternative frameworks for it's the realisation of human rights in the post-2030 era. This entails, at a more fundamental level, thinking about how human rights can be most effectively respected, protected, and fulfilled while simultaneously mitigating climate change and living within planetary boundaries.

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