



## **ANTWERP LAW REVIEW**

**Can less be more?**

**How can the progressive realization of socio-economic human rights be reconciled with the idea of Postgrowth in the Andean context?**

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## I. Introduction

### A. Problem definition

Postgrowth is very much debated in the Global North, with northern scholars mainly thinking about the implications of this paradigm shift in their own part of the world. It is an outlook that often does not consider the particular situation and context of the Global South. As a result, the full theories of Postgrowth do not always fully translate for Global South contexts.<sup>2</sup> Specifically, the Latin American-Andean context provides its own legal framework and concepts aimed at protecting the environment. These, often indigenous-inspired, frameworks advocate for a more harmonious relationship between humans and nature.<sup>3</sup> Therefore, it is crucial to examine how the Latin American-Andean frameworks complement or contradict the Postgrowth paradigm and how the concept of Postgrowth could be adapted to the Latin American-Andean context. This thesis will explore this intersection.

Postgrowth is still a relatively new concept and remains hypothetical in many aspects. There are significant gaps in the literature, and many questions remain surrounding to its long-term consequences. In contrast, the Global South has not only distinct socio-economic conditions but also faces unique challenges, such as environmental degradation and the struggle for equitable development.<sup>4</sup> Therefore, it is essential to critically investigate how Postgrowth might be reconciled with the needs of Latin American-Andean countries (Peru, Bolivia and Ecuador), which are in the process of economic development but are also disproportionately affected by climate change.<sup>5</sup>

Moreover, the progressive realization of socio-economic rights is a key principle in international human rights law. Progressive realization mandates that states progressively implement these rights to the maximum of their available resources, ensuring that economic and social rights are realized in a way that reflects the capabilities of each state over time.<sup>6</sup> However, economic growth alone does not guarantee the progressive realization of these rights, and it is an important consideration in determining how effectively these rights can be fulfilled. Economic growth enables states to generate

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<sup>2</sup> R Hollender, 'Post-Growth in the Global South: The Emergence of Alternatives to Development in Latin America' (2015) 29 *Socialism and Democracy* 73; J Hickel, 'What Does Postgrowth Mean? A Few Points of Clarification' (2021) *Globalizations* 18, 1105.

<sup>3</sup> B Thomson, 'Pachakuti: Indigenous Perspectives, Buen Vivir, Sumaq Kawsay and Degrowth' (2011) 54(4) *Development* 448; K Richter, 'On Cultural Direction of Socio-Ecological Transformations: Lessons from Postgrowth and Buen Vivir/Sumak Kawsay' in M Kocovic De Santo and S Domptail (eds), *Postgrowth, Decolonization and Development: When Culture Meets the Environment* (Springer 2023) 99.

<sup>4</sup> J Hickel, 'What Does Postgrowth Mean? A Few Points of Clarification' (2021) *Globalizations* 18, 1105.

<sup>5</sup> J Bury, 'Climate Change and Water Resources in the Andes: Issues and Challenges for the 21st Century' (2008) 28(3/4) *Mountain Research and Development* 296.

<sup>6</sup> L Chenwi, 'Unpacking "Progressive Realisation": Its Relation to Resources, Minimum Core and Reasonableness' (2013) 46 *De Jure Law Journal* 745.

the necessary resources for this realization, but it is increasingly questioned whether economic growth is compatible with the broader, more sustainable objectives set out by Postgrowth theories.

This thesis will explore the tension between economic growth and the realization of socio-economic rights, specifically in the context of the Latin American Andean region. It will critically examine whether the Postgrowth paradigm, which seeks to reduce economic growth, can be reconciled with the need for growth in the Andean countries to support the realization of human rights. While Postgrowth may reduce economic growth, which Peru, Bolivia and Ecuador are pursuing to further develop, it has the potential to offer alternative pathways for environmental protection and sustainable development. The Andean region, heavily affected by climatic change, can gain by the adoption of a Postgrowth development model that reinterprets material development to enhance, for example, ecological balance, social equality, and the living conditions of its inhabitants. As such, this thesis contends that Postgrowth and socio-economic rights are not contradictory but should be rethought using considerations of intergenerational and ecological justice, and it will outline the reasons and methods for doing so.

## **B. Relevancy**

Social relevance: Most contemporary research on Postgrowth is focused on the Global North, with scant attention given to perspectives from the Global South, especially indigenous communities. Indigenous peoples are often the most affected by climate change, yet their voices are marginalized in international policy-making processes. This research will offer an invaluable contribution by focusing on Peru, Ecuador, and Bolivia, offering insights that will be relevant to indigenous and marginalized communities in the Global South more broadly. These communities and their needs are often underrepresented in global discourse, particularly in relation to environmental protection and sustainable development, deserve greater attention.

Academic relevance: As Postgrowth is still a nascent and hypothetical concept, much research remains to be done to understand its impact on existing frameworks of human rights, particularly in the Global South. This thesis aims to fill this gap in the literature by exploring the implications of Postgrowth for the realization of socio-economic rights, and by adding a new perspective to the academic discussion surrounding the relationship between environmental sustainability and human rights. It will also contribute to the representation of Andean indigenous perspectives, which are underrepresented in academic discourse, by adding their conception of the right of nature and development into the existing discourse on Postgrowth.

### C. Structure of the thesis

This thesis will answer the main research question “How can the progressive realization of socio-economic human rights be reconciled with the idea of Postgrowth in the Andean context?” After this introductory chapter where the relevancy of the main research question is explained and the research methodology is set out, the two sub-questions are both answered in their respective chapters.

The first sub question is ‘How can the Western concept of Postgrowth be transformed and redefined in the Andean region through indigenous philosophies and legal-political frameworks?’ Therefore Chapter 2 begins by outlining a definition for Postgrowth (2.1), given the lack of a universally agreed-upon definition. Following, the importance of the Post-Development Theory for the transformation of Postgrowth to the Andean region will be researched (2.2), as a way to detach from the Western (unconscious) colonial structures. Finally, the indigenous concept of *Buen Vivir* is researched (2.3.1) followed by analysis of how Postgrowth principles are reflected in the legal frameworks of Ecuador, Bolivia, and Peru (2.3.2).

The second sub question is: ‘What does the principle of progressive realization of socio-economic human rights entail at the international level and within the Latin American jurisdiction?’ Therefore Chapter 3 begins with a short overview of the history of socio-economic human rights (3.1). After this overview, the chapter is divided in the international and the Latin American framework. The section on the international framework (3.2) will set out the main treaties that set out this framework and research what obligations these treaties bring to states. After, the Latin American framework (3.3) beginning with the primary regional treaty on socio-economic rights and its emphasis on progressive realization (3.3.1), followed by an analysis of domestic legal frameworks in Ecuador, Bolivia, and Peru (3.3.2).

The insights from both sub-questions will be synthesized in Chapter 4, which aims to provide a critical reflection on how the Western concept of Postgrowth can be redefined in the Andean context through indigenous philosophies and legal-political frameworks, while ensuring coherence with socio-economic international and regional human rights obligations.

### D. Methodology

To address the first sub-question, a literature review will be conducted on the concept of Postgrowth, particularly in the context of the Global South, and on the discourse surrounding this topic within Latin America. Rather than merely summarising existing knowledge, the review will aim to critically engage with the material, fostering deeper understanding and reflection. While a significant body of research exists on Latin American concepts such as *Buen Vivir*, their connection to Postgrowth thinking remains underexplored. This review will therefore pay particular attention to the intersections and divergences between these paradigms.

The literature review will begin with targeted searches using keywords such as *Postgrowth*, *degrowth*, sustainable development, and *Buen Vivir* in relevant academic databases. As the review progresses, additional sources will be identified through techniques such as snowball sampling. The main objectives of this literature review are twofold. First, to clarify the definitions and interpretations of key concepts used in the thesis, avoiding confusion due to the variety of meanings attributed to terms like Postgrowth and degrowth. Second, to explore the links between the primarily Western concept of Postgrowth and the Andean tradition of *Buen Vivir*.

To answer the second sub-question, doctrinal legal research will be employed. This part of the research analyses how the obligation to progressively realise socio-economic rights is interpreted and enforced by domestic, regional, and international legal bodies. As highlighted by the Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘The judiciary has a fundamental role in developing our understanding of these rights, in affording remedies in cases of violations, and in providing decisions on test cases, all of which can lead to systematic institutional change to prevent future violations.’ Accordingly, this section will involve the analysis of judgments and decisions from Latin American domestic courts, regional human rights bodies, and international mechanisms such as the UN Committee on Economic, Social and Cultural Rights (e.g., through its General Comments). The aim is to identify how these different bodies interpret and apply the obligation to progressively realise socio-economic rights, and to examine whether inconsistencies or tensions exist between them.

## 1. Research challenges

Researching the Global South comes with many difficulties that must be acknowledged. A first challenge is the language-barrier, as I am not a native Spanish speaker. Although English is a dominant language in academia, it is not universally used Latin America or specifically by indigenous communities in Latin America. When reviewing the judgements from domestic courts, not only language will be an issue, but it will also be essential to first understand the hierarchy of those courts. This is crucial to avoid attributing the same judicial weight to, for example, a small district court ruling in Peru as to a decision by the constitutional court. Another challenge is the limited availability of scholarly work from the Global South, especially given the historical and ongoing underrepresentation of Southern scholars in global academic discourse. These barriers must be navigated carefully to ensure that the research conducted is both rigorous and inclusive of the diverse perspectives that exist in the Global South.

## II. Translating Postgrowth to the Andean context

Steady and continuous economic growth seems to be the goal of most of the economic policies in the world. However, “the global economy has expanded to a point where limits

to growth are appearing.”<sup>7</sup> These limits lead to many already existing or upcoming global challenges such as climate change, shortages in resources, social unrest, or geopolitical conflicts.

One of the solutions for these challenges is Postgrowth. Many misconceptions exist about this term, as it does not in fact mean the opposite of growth.<sup>8</sup> To deconstruct these misconceptions, in this first section Postgrowth and the Post Development Theory will be defined and put into practice (Section 1 and 2). Following, Postgrowth will be researched through the lens of the Andean context (Section 3). This way a conclusion on a translation of the general (and Western) concept of Postgrowth into the Andean context will conclude this first chapter (Section 4).

### III. Postgrowth and the Andean region

#### A. Defining Postgrowth

Postgrowth has been interpreted in various ways. Some scholars define it as a “voluntary downscaling of material throughput, as opposed to the unplanned and harmful processes which are unleashed during recession”.<sup>9</sup> It serves as an umbrella term for a provocative activist movement, for a social movement and, for an action-based research initiative.<sup>10</sup> Postgrowth combines “ecological, political and cultural critiques towards the primacy of economic growth”.<sup>11</sup> In order to find a definition for Postgrowth this section will elaborate on the motivation behind the concept, the evolution of the paradigm and the put in practice of it.

##### 1. Why Postgrowth?

If continuous growth had no critical planetary or social limits, the ‘growth-project’ could be seen as a success.<sup>12</sup> However, these limits do in fact exist and scientist are warning of a ‘multi-dimensional crisis of ecological breakdown.’ The overshoot of planetary resources due to continuous economic growth has resulted in climate change, biodiversity loss<sup>13</sup> and

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<sup>7</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 117.

<sup>8</sup> J Hickel, 'What Does Postgrowth Mean? A Few Points of Clarification' (2021) *Globalizations* 18, 1106.

<sup>9</sup> T Smith, M Baranowski and B Schmid, 'Intentional Postgrowth and Its Unintended Consequences: Uneven Journeys Towards Post-Growth Transformations' (2021) 17(1) *Sustainability: Science, Practice and Policy* 1.

<sup>10</sup> T Smith, M Baranowski and B Schmid, 'Intentional Postgrowth and Its Unintended Consequences: Uneven Journeys Towards Post-Growth Transformations' (2021) 17(1) *Sustainability: Science, Practice and Policy* 4.

<sup>11</sup> K Richter, 'On Cultural Direction of Socio-Ecological Transformations: Lessons from Postgrowth and Buen Vivir/Sumak Kawsay' in M Kocovic De Santo and S Domptail (eds), *Postgrowth, Decolonization and Development: When Culture Meets the Environment* (Springer 2023) 101.

<sup>12</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 119.

<sup>13</sup> IPCC, *Climate Change 2023 Synthesis Report* (2023) 72 [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf) accessed 27 March 2025.

ocean acidification.<sup>14</sup> Biophysical constraints to, and limits on economic growth exist, e.g., declining energy sources<sup>15</sup>, lost land fertility<sup>16</sup>, rising greenhouse gases.<sup>17</sup> It is important to remember these are not natural effects of nature, but of humanity, particularly an economic system based on endless expansion benefiting a minority at the top. From a postcolonial viewpoint, relentless expansion is a type of imperialism, for it increases global disparities. The financial benefits are concentrated primarily in the Global North while the ecological costs are also concentrated in the Global South where the dirtiest stages of production are carried out. It is crucial to emphasize that these consequences are not nature made but human made, primarily driven by an economic system centred on perpetual expansion that disproportionately benefits the upper class.<sup>18</sup> From a post-colonial perspective, continuous growth is seen as a form of imperialism as it deepens global inequalities. The economic gains are mostly centred in the Global North whereas the environmental damage mostly happens in the Global South, as it is left to handle the most environmentally damaging stages of production.<sup>19</sup>

The first economic answer to this issue is the pursuit of green growth.<sup>20</sup> Green growth aims to make economic expansion more sustainable e.g., by substituting fossil fuels with renewable energy.<sup>21</sup> However, these renewable substitutes also require many resources as well if they expect the same output of energy as from fossil fuels. Moreover, the essential resources used for the renewable energy substitutes, such as water, land and rare materials, compete with other critical needs such as food production and building infrastructure.<sup>22</sup> Postgrowth demands more than reconciling economic expansion with the existing environmental and sustainability norms. It seeks the reduction of use of the essential resources not merely as a consequence of improved efficiency, but as the fundamental goal of the system itself.<sup>23</sup>

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<sup>14</sup> J Hickel, 'What Does Postgrowth Mean? A Few Points of Clarification' (2021) *Globalizations* 18, 1105–06; IPCC, *Climate Change 2023 Synthesis Report* (2023) 72 [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf) accessed 27 March 2025.

<sup>15</sup> UNEP, 'We're Gobbling Earth's Resources at an Unsustainable Rate' <https://www.unep.org/news-and-stories/story/were-gobbling-earths-resources-unsustainable-rate> accessed 27 March 2025.

<sup>16</sup> IPCC, *Climate Change 2023 Synthesis Report* (2023) 72 [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf) accessed 27 March 2025.

<sup>17</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 119.

<sup>18</sup> J Hickel, 'What Does Postgrowth Mean? A Few Points of Clarification' (2021) *Globalizations* 18, 1105.

<sup>19</sup> L Fioramonti, 'Post-Growth Theories in a Global World: A Comparative Analysis' (2024) 50 *Review of International Studies* 866, 867.

<sup>20</sup> J Hickel, 'What Does Postgrowth Mean? A Few Points of Clarification' (2021) *Globalizations* 18, 1106.

<sup>21</sup> M Sandberg, K Klockars and K Wilén, 'Green Growth or Degrowth? Assessing the Normative Justifications for Environmental Sustainability and Economic Growth through Critical Social Theory' (2019) 206 *Journal of Cleaner Production* 21; FreedomLab, 'Post-Growth: The Dawn of a New Era' <https://www.freedomlab.com/posts/post-growth-the-dawn-of-a-new-era> accessed 27 March 2025.

<sup>22</sup> G Kallis and others, 'Research on Degrowth' (2018) 43 *Annual Review of Environment and Resources* 291, 296.

<sup>23</sup> FreedomLab, 'Post-Growth: The Dawn of a New Era' <https://www.freedomlab.com/posts/post-growth-the-dawn-of-a-new-era> accessed 27 March 2025.

## 2. The evolution of Postgrowth

The notion of Postgrowth emerged in the 1970's as a limits-based critique against the dominant paradigm of continuous economic growth.<sup>24</sup> In the twenty-first century, the growth-paradigm had become almost universally accepted, based on the assumption “that economic growth is “good, imperative, essentially limitless, and the principal remedy for a litany of social problems”.<sup>25</sup> In this view, growth is expected to result in social progress, in poverty reduction and in an increase of living standards.<sup>26</sup>

However, all different approaches on Postgrowth agree that the Intergovernmental Panel on Climate Change's (IPCC) climate targets conflict with the current patterns of continuous economic growth.<sup>27</sup> The limits-based critique is reinforced by the scientific evidence that the current global economy is constrained by biophysical limits such as “climate change, biodiversity loss and other acute ecological issues associated with the rapid growth of human societies”.<sup>28</sup>

Since the 2012 United Nations Conference on Sustainable Development, also known as the Rio+20, the sustainability paradigm has appeared exhausted as it has been unable to make structural changes to an unwavering liberal consumerist society. At the political level, the belief that this liberal consumerist society can and will be aligned with the “values of social justice, political equality and ecological integrity“ remains predominant.<sup>29</sup> However, this assumption has been challenged, leading to a shift in views and discourses from the sustainability paradigm to the more radical eco-political Postgrowth-paradigm.<sup>30</sup>

Advocates for Postgrowth argue that the “capitalist consumer society” is still in denial about the system's toxic impact, as the system itself refuses to own up to being the cause. They suggest a reorganization of society and the invention of some new roles in society, leading us towards a society which is no longer obsessed with the need to accumulate material things. This social shift will get us to a smaller footprint society, with more localized economies that are fairer. Meanwhile, on the other side of the argument,

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<sup>24</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 119.

<sup>25</sup> M Büchs and M Koch, *Postgrowth and Wellbeing: Challenges to Sustainable Welfare* (Palgrave 2017) 9.

<sup>26</sup> *Ibid.*, 40.

<sup>27</sup> IPCC, *Climate Change 2023 Synthesis Report* (2023) 72 [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf) accessed 27 March 2025; L Nanning and others, 'Climate Crisis and Social Protection – From Worker Protection to Post-Growth Transformation?' (2023) 23 *Social Policy and Society* 701.

<sup>28</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 118.

<sup>29</sup> I Blühdorn, 'Post-Capitalism, Post-Growth, Post-Consumerism? Eco-Political Hopes Beyond Sustainability' (2017) 7(1) *Global Discourse* 42.

<sup>30</sup> *Ibid.*, 43.

defenders of the status quo argue that the technological advancements and green growth will sort out these global challenges.<sup>31</sup>

Continuous economic growth, by its nature, cannot be sustainable as it requires an increasing amount of (non-renewable) resources which results in a continuous increasing amount of waste (such as greenhouse gas emissions). This logically results in a big threat to the functioning of humans and of the environment in both short and long term.<sup>32</sup> Exceeding those planetary boundaries are not conducive for the further development of the societies who initially caused the exceeding.<sup>33</sup> Because of the fixation within policy-making on “science, technology and management”, other policy approaches most often proposed by ecologist scholars and/or activist were pushed aside. These policies resulted in ignoring the fact that climate change is not an isolated issue but is inextricably linked to socio-economic issues.<sup>34</sup> Critique on growth is thus both ecological and social.

Postgrowth appears in different forms depending on the scholar or theoretical framework, but the core principle remains the same: a radical transformation of the current system to a system shifting<sup>35</sup> away from growth-centred models in decision making and integrating the ecological and social considerations. The three main post-growth policies are degrowth, steady-state economy and well-being economy.<sup>36</sup> Where, degrowth aims to decrease the economic activity, the other two policies don't. Steady-state economy e.g. still limits growth by aiming for a stable economy within the planetary boundaries. Well-being economy, on the other hand does not necessarily limits growth but shifts the main priority of the economy from economic growth to the well-being of humans and the environment.<sup>37</sup>

### 3. From theory to practice

In practice, Postgrowth is best understood as a flexible conceptual framework rather than a rigid, goal-oriented model with a definitive endpoint.<sup>38</sup> However, the practical realization of this vision is far from realized. Currently, Postgrowth largely exists as an intellectual

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<sup>31</sup> I Blühdorn, 'Post-Capitalism, Post-Growth, Post-Consumerism? Eco-Political Hopes Beyond Sustainability' (2017) 7(1) *Global Discourse* 46.

<sup>32</sup> M Büchs and M Koch, *Postgrowth and Wellbeing: Challenges to Sustainable Welfare* (Palgrave 2017) 40.

<sup>33</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 119.

<sup>34</sup> I Blühdorn, 'Post-Capitalism, Post-Growth, Post-Consumerism? Eco-Political Hopes Beyond Sustainability' (2017) 7(1) *Global Discourse* 45.

<sup>35</sup> L Nenning and others, 'Climate Crisis and Social Protection – From Worker Protection to Post-Growth Transformation?' (2023) 23 *Social Policy and Society* 702.

<sup>36</sup> L Fioramonti, 'Post-Growth Theories in a Global World: A Comparative Analysis' (2024) 50 *Review of International Studies* 872.

<sup>37</sup> *Ibid.*, 875.

<sup>38</sup> T Smith, M Baranowski and B Schmid, 'Intentional Postgrowth and Its Unintended Consequences: Uneven Journeys Towards Post-Growth Transformations' (2021) 17(1) *Sustainability: Science, Practice and Policy* 4; J Gerber and R Raina, 'Post-Growth in the Global South? Some Reflections from India and Bhutan' (2018) *Ecological Economics* 150, 355.

discourse primarily shaped by scholars within a limited geographical and academic scope.<sup>3940</sup>

A central element in this discussion is the redefinition of ‘the economy.’ The traditional economic model tends to frame the economy as a stand-alone subject, often reducing it to GDP growth and productivity. However, the Postgrowth-model challenges this view by emphasizing that economic activity extends beyond mere employment. Work, in this context, is not merely a means of production, or as some critics argue, exploitation.<sup>41</sup> Instead, work encompasses a wide range of different skills, attitudes and habits that must be understood in its broader social context.<sup>42</sup> For example, care work, such as raising children or supporting the elderly. This is essential for the functioning of society, yet it is often unpaid and undervalued in conventional economic metrics. It requires a paradigm shift from growth as it is currently understood to one that prioritizes human well-being and environmental health over profit maximization.

Another important economic principle in post-growth discourse is that of satisfying basic needs.<sup>43</sup> This idea involves nothing short of departing from the current desires-based consumer model to de-commodifying the ‘needs.’ This means that what is vital for the most elemental well-being, such as having food, housing, health care, and education, should not be submitted to the dictates of the market, but should be guaranteed and accessible for all human beings.<sup>44</sup>

Beyond the economic considerations, Postgrowth scholars advocate for a democratic approach. The Postgrowth movement highlights the risk of environmental crises leading to authoritarian regimes, in this case called ‘ecototalitarian regimes’, as a way to respond quickly to environmental threats.<sup>45</sup> Therefore the movement asks for a broad bottom-up approach instead of an authoritarian/ecototalitarian top-down imposition of change.<sup>46</sup> However, to avoid an ‘ecocracy’, an autocracy in the name of the ecology, a collective and democratic position should be chosen in the foreseeable future. The Postgrowth paradigm

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<sup>39</sup> T Crownshaw and others, 'Over the Horizon: Exploring the Conditions of a Post-Growth World' (2019) *The Anthropocene Review* 6(2), 117.

<sup>40</sup> Green European Foundation, 'Manifesto for an Intergenerationally Just Post-Growth European Economy' (May 2023) <https://gceurope.org/manifesto-for-an-intergenerationally-just-post-growth-european-economy/> accessed 27 March 2025.

<sup>41</sup> T Smith, M Baranowski and B Schmid, 'Intentional Postgrowth and Its Unintended Consequences: Uneven Journeys Towards Post-Growth Transformations' (2021) 17(1) *Sustainability: Science, Practice and Policy* 4.

<sup>42</sup> V Fournier, 'Escaping from the Economy: The Politics of Degrowth' (2008) 2(1) *International Journal of Social Sciences Paradigms* 535; T Smith, M Baranowski and B Schmid, 'Intentional Postgrowth and Its Unintended Consequences: Uneven Journeys Towards Post-Growth Transformations' (2021) 17(1) *Sustainability: Science, Practice and Policy* 4.

<sup>43</sup> L Nanning and others, 'Climate Crisis and Social Protection – From Worker Protection to Post-Growth Transformation?' (2023) 23 *Social Policy and Society* 702.

<sup>44</sup> K Kongshøj, 'Social Policy in a Future of Degrowth? Challenges for Decommodification, Commoning and Public Support' (2023) 10 *Humanities & Social Sciences Communications* 3.

<sup>45</sup> V Fournier, 'Escaping from the Economy: The Politics of Degrowth' (2008) 2(1) *International Journal of Social Sciences Paradigms* 535.

<sup>46</sup> T Smith, M Baranowski and B Schmid, 'Intentional Postgrowth and Its Unintended Consequences: Uneven Journeys Towards Post-Growth Transformations' (2021) 17(1) *Sustainability: Science, Practice and Policy* 2–3.

is not meant to be a form of “ecocracy,” but rather as an opportunity to spark debates and reclaim control over the organisation of economic, social and environmental activities.<sup>47</sup>

#### 4. Sub conclusion: Definition of Postgrowth.

Postgrowth is opposed to the politics of the pursuit of endless economic growth in favour of a society that focuses on human needs and ecological limits. This paradigm-shifting framework disrupts the dominant assumption that economic growth is self-evidently good, necessary, and unlimited.

Postgrowth is a response to that predominant assumption because it is leading to environmental degradation, social inequality, and global injustice. It is not a rigid model but a dynamic, evolving paradigm that invites societies to reimagine progress beyond growth. Economically, Postgrowth does not aim to make economic growth more sustainable but goes beyond the sole aim of economic growth as the drive of our economic and political systems. Instead, it calls for a total reorientation of societal priorities from said economic growth towards the fulfilment of human and ecological well-being. Reducing the use of natural resources in the current economy would be a result of improved efficiency; in the Postgrowth paradigm, by contrast, it is an intentional outcome grounded in the recognition of planetary limits. The economy within the Postgrowth paradigm must thus achieve two goals: guarantee access to basic needs through and not exceeding ecological thresholds. Politically, Postgrowth emphasizes the importance of democratic, bottom-up change to avoid authoritarian responses to environmental crises.

### **B. Post development theory**

Until the end of the 1970’s the central focus in global policy regarding the Global South was the nature of development, with economic growth as the primary solution.<sup>48</sup> Development, therefore, was primarily understood as “growth in income per person in economically underdeveloped areas”.<sup>49</sup> Simply said, if the issue is poverty and insufficient income, economic growth would be the logical solution.<sup>50</sup> This interpretation of development was not directly defined by the United Nations Charter (1945) as the language of the Charter surrounding the term remained vaguely stated but it was, subsequently to the political discourse, implied in its call for “economic and social progress

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<sup>47</sup> V Fournier, 'Escaping from the Economy: The Politics of Degrowth' (2008) 2(1) *International Journal of Social Sciences Paradigms* 535.

<sup>48</sup> A Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995) 44.

<sup>49</sup> G Esteva, 'Development' in W Sachs (ed), *The Development Dictionary: A Guide to Knowledge as Power* (Zed Books 1992) 8.

<sup>50</sup> F Naz, 'Arturo Escobar and the Development Discourse: An Overview' (2006) 28(3) *Asian Affairs* 64.

and development”.<sup>51</sup> This interpretation was later reinforced by the World Bank<sup>52</sup>, the UN General Assembly<sup>53</sup> and, the International Monetary Fund<sup>54</sup>.

In the 1980’s and 1990’s a growing critique on this dominant development paradigm started arising.<sup>55</sup> Scholars such as Arturo Escobar, Gustavo Esteva, Majid Rahnema and Wolfgang Sachs argued for a new vision on development, or the post development theory. This theory states that development is not a neutral and universally beneficial process, but a Western-centric construct that legitimizes ways of intervening in the Global South.<sup>56</sup> It therefore calls for alternative visions, which will be discussed below.

## 1. Development as discourse

Escobar states that the notion of development is a historic construct shaped by (international) institutions. He refers to Foucault when arguing that the notion of development is not a neutral reflection of reality but is a way of producing a new reality.<sup>57</sup> Escobar’s study is inspired by Said’s study on Orientalism<sup>58</sup>, which states that ‘The Orient’ is not a geographical reality but a Western product to justify its colonial rule over it.<sup>59</sup> This logic, according to Escobar, can be extended to the concept of ‘the Third World’.<sup>60</sup> ‘The Third World’ is thus not a natural but a Western discursive creation. It is in other words a product of Western policies and academic practices to stage certain regions as “backward and even lazy”. This way development becomes a regime of power of the West by framing entire societies as problematic which legitimizes interventions and external controls to impose economic models and reshape local societies.<sup>61</sup> It thus goes beyond mere discourse and is used instead as a practical tool. Following, Escobar does not solely critique the discursive practices but also calls for alternatives. Perspectives from local cultures are key in these alternatives where “localized, pluralistic grassroots movements” are promoted. He states that a transition in thinking from modern to plural in politics, economics and culture is needed instead of a need for more development.<sup>62</sup> He deepens out his alternatives in a new book twenty years later where he promotes a pluriverse, a

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<sup>51</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) art 55, 1 UNTS XVI.

<sup>52</sup> International Bank for Reconstruction and Development (World Bank), *Annual Report 1951* (World Bank 1951).

<sup>53</sup> UNGA Res 1710 (XVI) ‘Programme for the First United Nations Development Decade’ (19 December 1961) UN Doc A/RES/1710 (XVI).

<sup>54</sup> International Monetary Fund, *Annual Report 1950* (IMF 1950); International Monetary Fund, ‘Economic Development and Financial Stability’ (1953) 2(2) *IMF Staff Papers*.

<sup>55</sup> A Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995) 42.

<sup>56</sup> M Rahnema, ‘A Post-Development Era?’ in J Crush (ed), *Power of Development* (Routledge 1995) 211.

<sup>57</sup> A Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995) 6.

<sup>58</sup> EW Said, *Orientalism* (Pantheon Books 1978) 5–7.

<sup>59</sup> S M Omar, ‘Rethinking Development from a Postcolonial Perspective’ (2012) *Journal of Conflictology* 3(1) 46.

<sup>60</sup> A Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995) 8–9.

<sup>61</sup> *Ibid.*, 11, 77, 102.

<sup>62</sup> *Ibid.*, 215, 218.

coexistence of multiple, diverse ways of knowing and being in the world, with a big focus on autonomy and where there is not one universal path to progress, as the Western development paradigm states.<sup>63</sup>

## 2. Language as a tool

Post Development theorist Esteva argues that language is the primary tool through which global hierarchies are constructed and maintained. He points out that binary terms such as “developed/underdeveloped, rich/poor, first world/third world” are not neutral descriptors but ideological labels that impose a hierarchy between inferior and superior societies.<sup>64</sup> This language use is seen by post-development theorist as an arrogant way of the Western World to portray itself as superior.<sup>65</sup> Therefore post development theory reinterprets common used (Western) terms to change the development discourse from homogenising to liberating by reclaiming language rooted in local contexts.<sup>66</sup> Esteva’s work is closely linked to the above mentioned principle of *Buen Vivir*. *Buen Vivir* is a combination of different ideas, specific to different cultures, with their own language.<sup>67</sup> It represents the kind of plural and (indigenous) autonomy-based alternative to the development discourse that Esteva advocated for.

## 3. Epistemic violence and Western hegemony

Post Development theorists argue that development not only imposes economic models and discursive labels but also enforces a deeper form of domination they call ‘epistemic violence’. This refers to a systematic marginalization, silencing and erasure of non-Western ways of knowing by the dominant Western system, often disguised as scientific neutrality or humanitarian concern. In development, this manifests as the marginalization of indigenous and local epistemologies by Western rationalities.<sup>68</sup>

Epistemic violence is intrinsically tied to Western hegemony, which marginalizes all other hegemonies while forcing conformity to its own Western standards. This dominance is operated through different fields such as education, media, development policies and

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<sup>63</sup> A Escobar, *Designs for the Pluriverse: Radical Interdependence, Autonomy, and the Making of Worlds* (Duke University Press 2018) 175.

<sup>64</sup> A Escobar, ‘Imagining a Post-Development Era’ in J Crush (ed), *Power of Development* (Routledge 1995) 215.

<sup>65</sup> A McGregor, ‘New Possibilities? Shifts in Post-Development Theory and Practice’ (2009) 3(5) *Geographical Compass* 1688, 2.

<sup>66</sup> *Ibid.*, 3.

<sup>67</sup> E Gudynas, ‘Buen Vivir: Today’s Tomorrow’ (2011) 54.

<sup>68</sup> A Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995) 13; GC Spivak, ‘Can the Subaltern Speak?’ in RC Morris (ed), *Can the Subaltern Speak? Reflections on the History of an Idea* (Columbia University Press 2010) 28.

international governance until the point where cultures from ‘the Third World’ were erased,” ironically in the name of people’s interests”.<sup>69</sup>

#### 4. Sub conclusion: Role of the Post Development Theory in the translation of Postgrowth

The role of post-development theory in the translation of Postgrowth is not merely supportive but also transformative. Post-development reorients the meaning of what a Postgrowth future might look like in contexts shaped by colonialism, extractivism, and epistemic erasure. Its core contribution is methodological and ontological: it invites Postgrowth to leave its attachment to Eurocentric universals. In this way, post-development challenges the implicit assumption that Postgrowth is a neutral, technical response to ecological crisis. It insists that the way we frame the crisis is shaped by power. Post-development theory thus reframes the work of “translation” not as the adaptation of a Northern theory to Southern realities, but as a two-way exchange that may challenge and unsettle our usual ways of thinking and understanding of the world.

Crucially, post-development theory illuminates the political stakes of translation. Without it, Postgrowth risks reproducing the Western elements of value, governance, and transition. By foregrounding autonomy, territoriality, and the lived practices of resistance, post-development shifts attention away from individual and abstract measures towards collective struggles that already contest growth on the ground. It reminds us that Postgrowth futures are not invented from scratch; they are already underway in practices of care, reciprocity, and defence of land and life.

What is at stake here is not just an “alternative development” but alternatives to development. This is a rejection of the very grammar through which growth and progress have been defined. In this sense, post-development gives Postgrowth the tools to escape its own unconscious colonisation. It opens a space where Postgrowth is not solely translated into local terms but is reconstituted through local terms.

### C. Translation into the Andean context

As previously mentioned, the Postgrowth discourse is a primarily Western-oriented paradigm. In Latin America, especially in the Andean region, discussions about alternatives to the dominant economic growth model are often centred around the *Buen Vivir*-paradigm.<sup>70</sup> While Postgrowth and *Buen Vivir* both challenge growth centred economics, they represent different perspectives with different backgrounds. Richter argues that Postgrowth combined with different Latin American legal and indigenous concepts will create “quantitative and qualitative changes towards social equity, wellbeing

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<sup>69</sup> A Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995) 44.

<sup>70</sup> B Thomson, 'Pachakuti: Indigenous Perspectives, Buen Vivir, Sumaq Kawsay and Degrowth' (2011) 54(4) *Development* 448.

and ecological sustainability”.<sup>71</sup> This section will research how Postgrowth could be reconciled with the Andean concepts by setting out the indigenous concepts of *Sumak Kawsay* and *Buen Vivir* and the already existing legal and constitutional expressions of Postgrowth in the Andean countries.

1. *Sumak Kawsay* and *Buen Vivir*

(a) From indigenous concept to political movement

*Sumak Kawsay*, translated as “a life of fulness,” is an indigenous way of living that emphasizes harmony with nature and community. The concept was first formally recorded in the ‘Amazonga Plan,’ a document that captured *sache runa yachai* (the wisdom of the indigenous people of the jungle). Through this publication, the knowledge and philosophy of the Quechua-Amazonian communities were formally shared for the first time. The philosophical framework is built on three principles: “a land free of evil, a clear and harmonious life and the art of understanding and knowing”.<sup>72</sup> It is important to note that *Sumak Kawsay* was never meant to be an alternative to development as there was no notion of development, wealth and poverty in the first place within this community.<sup>73</sup> A similar conceptualization exists in Bolivia, which will be further discussed below.

Although it might be superficially compared to Western concepts such as social justice and sustainability<sup>74</sup>, *Sumak Kawsay* has much deeper roots and meanings. It is also a decolonial concept, inseparable from the political demands of indigenous communities.<sup>75</sup>

From around 1980, *Sumak Kawsay* evolved into an indigenous political movement against “illiteracy, poverty and discrimination” by indigenous movements in the Ecuadorian mountains. A decade later it appeared as a counterproposal to the paradigm of sustainable development by the World Bank<sup>76</sup>, continuing to grow through interactions with other Latin American indigenous movements in the 1990s and 2000s.<sup>77</sup>

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<sup>71</sup> K Richter, 'On Cultural Direction of Socio-Ecological Transformations: Lessons from Postgrowth and Buen Vivir/Sumak Kawsay' in M Kocovic De Santo and S Domptail (eds), *Postgrowth, Decolonization and Development: When Culture Meets the Environment* (Springer International Publishing 2023) 99.

<sup>72</sup> A Hidalgo-Capitán, A Cubillo-Guevara and F Masabalín-Caisaguano, 'The Ecuadorian Indigenist School of Good Living (Sumak Kawsay)' (2022) 12(4) *SAGE Open* 409.

<sup>73</sup> C Walsh, 'Sumak Kawsay: An Introduction' in *Decolonial Thought in Latin America* (2015) 114; U Villalba, 'Buen Vivir vs Development: A Paradigm Shift in the Andes?' (2013) 34(2) *Third World Quarterly* 1427, 1430.

<sup>74</sup> E Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54(4) *Development* 441.

<sup>75</sup> C Walsh, 'Sumak Kawsay: An Introduction' in W Mignolo and C Walsh (eds), *Decolonial Thought in Latin America* (2015) 110.

<sup>76</sup> K Richter, 'On Cultural Direction of Socio-Ecological Transformations: Lessons from Postgrowth and Buen Vivir/Sumak Kawsay' in M Kocovic De Santo and S Domptail (eds), *Degrowth, Decolonization and Development: When Culture Meets the Environment* (Springer International Publishing 2023) 104.

<sup>77</sup> A Hidalgo-Capitán, A Cubillo-Guevara and F Masabalín-Caisaguano, 'The Ecuadorian Indigenist School of Good Living (Sumak Kawsay)' (2022) 12(4) *SAGE Open* 409.

When *Sumak Kawsay* entered the political decision-making sphere, it was adapted into a redefined and broader formalized paradigm called *Buen Vivir*, translated to good living.<sup>78</sup> While *Buen Vivir* draws inspiration from *Sumak Kawsay*, it represents a more formalized and political and legal framework tailored to state governance.<sup>79</sup> It can be defined as “political proposal of social transformation that seeks to achieve a way of life in harmony with oneself, with other human beings and with other beings of nature”. However, *Buen Vivir* does not have a single, fixed definition; rather, it serves as an umbrella term for a plurality of concepts derived from indigenous worldviews and adapted into formal political frameworks.<sup>80</sup> Indigenous ideas behind *Buen Vivir* were constitutionalised, incorporated in development plans, and soon the *Buen Vivir*-paradigm on development became a political trend across Andean-Amazonian borders to the whole continent of Latin America.<sup>81</sup>

The *Buen Vivir* paradigm emphasizes human wellbeing and the intrinsic coexistence between humanity and nature and therefore highlighting the earth’s limitations. It also contains a socio-economic political proposition, in which the market plays a different role, and hierarchies between people and between the people and the market changes.<sup>82</sup> The economy under this model is based on the value of solidarity between people, which may take a monetary form but also includes mutual support and cooperation.<sup>83</sup>

(b) Similarities and differences between Postgrowth and *Buen Vivir*

Postgrowth and *Buen Vivir* both emerged from different geographical, cultural, and intellectual traditions. Postgrowth is rooted in Western ecological economics and scientific rationalism and *Buen Vivir* is rooted in indigenous ways of living. However, despite these differences, both paradigms critique the growth-centred economic paradigms. Both reject GDP and growth-centred models as a measure of well-being by changing the narrative to an emphasis on ecological limits and social equity, shifting the focus towards ecological limits and social equity. They thus agree on the reorientation of economic priorities towards a human and planetary well-being.<sup>84</sup>

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<sup>78</sup> E Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54(4) *Development* 442, 446.

<sup>79</sup> Richter K, 'On Cultural Direction of Socio-Ecological Transformations: Lessons from Postgrowth and Buen Vivir/Sumak Kawsay' in Kocovic De Santo M and Domptail S (eds), *Degrowth, Decolonization and Development: When Culture Meets the Environment* (Springer International Publishing 2023) 104.

<sup>80</sup> A Hidalgo-Capitán, A Cubillo-Guevara and F Masabalín-Caisaguano, 'The Ecuadorian Indigenist School of Good Living (Sumak Kawsay)' (2022) 12(4) *SAGE Open* 409; E Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54(4) *Development* 442; U Villalba, 'Buen Vivir vs Development: A Paradigm Shift in the Andes?' (2013) 34(2) *Third World Quarterly* 1427, 1429.

<sup>81</sup> C Walsh, 'Sumak Kawsay: An Introduction' in W Mignolo and C Walsh (eds), *Decolonial Thought in Latin America* (2015) 115.

<sup>82</sup> K Richter, 'On Cultural Direction of Socio-Ecological Transformations: Lessons from Postgrowth and Buen Vivir/Sumak Kawsay' in M Kocovic De Santo and S Domptail (eds), *Degrowth, Decolonization and Development: When Culture Meets the Environment* (Springer International Publishing 2023) 104.

<sup>83</sup> A Acosta, 'The Good Life: An Opportunity to Imagine Another World' (2012) *Development Dialogue* 61, 7.

<sup>84</sup> T Jackson, *Prosperity without Growth: Foundations for the Economy of Tomorrow* (2nd edn, Routledge 2017) 33; E Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54(4) *Development* 445.

A significant difference between the two paradigms is that the Postgrowth paradigm is inextricably linked with the notion of development, particularly within the framework of ecological economics. In contrast *Buen Vivir* rejects this Western-centric notion of development all together<sup>85</sup>, focusing instead on a more relational and context-specific vision of well-being rooted in community, nature, and social harmony.<sup>86</sup>

Surprisingly, there has not yet been a global attempt to consolidate these paradigms into one coherent framework. Despite their differences, a collective goal and common values can be identified within both paradigms. Both challenge the logic of perpetual economic growth and advocate for a reimagining of societal priorities towards sustainability, equity, and human flourishing. This convergence creates a space for potential synthesis and mutual enrichment.<sup>87</sup> For example, as noted in the previous chapter, Postgrowth frameworks often lack a decolonial perspective, which is a critical blind spot when addressing the global inequalities perpetuated by growth-centric models. Here, *Buen Vivir* can fill this gap, bringing indigenous wisdom and decolonial frameworks to the conversation.

At the same time, Postgrowth could offer *Buen Vivir* a more systematic critique of economic systems, complementing its more idealistic vision with a structural analysis of the forces driving environmental destruction and social inequality. While *Buen Vivir* emphasizes living in harmony with nature and community, Postgrowth could help provide the broader political-economic context for understanding how the global capitalist system operates within and often against these principles.<sup>88</sup>

## 2. Legal and Constitutional Expressions of Post-Growth Principles in the Andes

The concept of *Buen Vivir* has been very influential throughout Latin America, influencing legal frameworks, Indigenous organizing, and policymaking in many countries. Although its most prominent institutionalization occurred in Ecuador and Bolivia, its ideas have reverberated beyond those national borders to influence larger narratives around development, environmental justice, and indigenous rights. This chapter examines how *Buen Vivir* has been embodied in Ecuador, Bolivia, and Peru and its impact on legal frameworks and social movements.

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<sup>85</sup> S Caria and R Domínguez, 'Ecuador's "Buen Vivir": A New Ideology for Development' (2016) 43(1) *Latin American Perspectives* 21.

<sup>86</sup> (2016) 43(1) *Latin American Perspectives* 21; E Gudynas, 'Buen Vivir' in G D'Alisa, F Demaria and G Kallis (eds), *Degrowth: A Vocabulary for a New Era* (Routledge 2015) 204.

<sup>87</sup> A Kothari, F Demaria and A Acosta, 'Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to Sustainable Development and the Green Economy' (2014) 57(3–4) *Development* 370.

<sup>88</sup> N Chassagne, 'Sustaining the "Good Life": Buen Vivir as an Alternative to Sustainable Development' (2018) 53(3) *Community Development Journal* 19.

While Buen Vivir has revolutionary potential, the conflicting forces are significant, given continued extractivism and the disjuncture between a moral stance and a financial bottom line.

(a) Ecuador: *Buen Vivir* and the Rights of Nature

The evolvment of the indigenous *Sumak Kawsay*-thought school to grassroots mobilizations into constitutional principles happened in Ecuador. This transformation became tangible when different leaders of the indigenous movement, such as Luis Macas, Blanca Chancoso, Nina Pacari, Mario Melo, and Fernando Kowii, became important leaders in Ecuadorian domestic politics in the 1990's.<sup>89</sup> A significant moment in this transformation was the march of 5000 indigenous people from Puyo to Quito in 1992 demanding state recognition of indigenous land rights and cultural identities.<sup>90</sup>

The momentum after the protest culminated in the revision of the Ecuadorian Constitution in 2008,<sup>91</sup> where a transition was announced from “a juridical anthropocentric orientation of right to an eco-centric one (specifically articles 10 and 71 to 74).”<sup>92</sup> This constitution was the first constitutional recognition of nature as a legal subject by embedding the pre-colonial indigenous concepts of *Sumak Kawsay*<sup>93</sup> and *Pachamama*<sup>94</sup> and *Buen Vivir*<sup>95</sup>. It goes further than the sole recognition, the constitution includes a set of rights derived from the recognitions such as the rights of nature as a legal subject<sup>96</sup>, the right of nature to be restored when damaged<sup>97</sup>, the obligation of the state to prevent the extinction of species and ecosystems<sup>98</sup> and the collective right of people to benefit from the environment<sup>99</sup>. Because these rights are on the same hierarchical level as all other constitutional rights, such as the right to freedom<sup>100</sup> and the right to participation<sup>101</sup>, the Ecuadorian state is obliged to take these into consideration for every legislative or administrative decision.<sup>102</sup> Article 275 of the Constitution of 2008 establishes

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<sup>89</sup> A Hidalgo-Capitán, A Cubillo-Guevara and F Masabalín-Caisaguano, *The Ecuadorian Indigenist School of Good Living (Sumak Kawsay)* (SAGE 2022) 418; R J Cobey, *Living the Good Life? An Analysis of Ecuador's Plan Nacional Para el Buen Vivir Development Model as an Alternative to a Neoliberal Global Framework* (MA thesis, East Carolina University 2012) 10.

<sup>90</sup> Global Nonviolent Action Database, 'Lowland Indigenous Ecuadorians March for National Recognition and Land Rights, 1992' (Swarthmore College, 1992) <https://nvdatabase.swarthmore.edu/content/lowland-indigenous-ecuadorians-march-national-recognition-and-land-rights-1992> accessed 14 August 2024.

<sup>91</sup> E Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54(4) *Development* 443; U Villalba, 'Buen Vivir vs Development: A Paradigm Shift in the Andes?' (2013) 34(2) *Third World Quarterly* 1427.

<sup>92</sup> L J Kotzé and P Villavicencio Calzadilla, 'Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador' (2017) 6(3) *Transnational Environmental Law* 178.

<sup>93</sup> S Sarmiento Martínez, 'Analysis and Evolution of Environmental Law in Ecuador with the Constitution of 2008 and Its Relation to Political Marketing in the Good Way of Living' (2023) 21(1) *Human Review: International Humanities Review / Revista Internacional de Humanidades* 106.

<sup>94</sup> Constitution of the Republic of Ecuador (2008), art 71.

<sup>95</sup> *Ibid.*, art 275.

<sup>96</sup> *Ibid.*, art 71.

<sup>97</sup> *Ibid.*, art 72.

<sup>98</sup> *Ibid.*, art 73.

<sup>99</sup> *Ibid.*, art 74.

<sup>100</sup> *Ibid.*, art 66.

<sup>101</sup> *Ibid.*, arts 61, 62, 95.

<sup>102</sup> E Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54(4) *Development* 443.

the Ecuadorian development regime in order to achieve *Buen Vivir* or Good Living.<sup>103</sup> In order to realise this, the State is responsible for “planning national and sustainable development and the redistribution of resources for access to good living”.<sup>104</sup> In this framework, the state is made explicitly responsible for planning national and sustainable development and redistributing resources to ensure access to *Buen Vivir* for all.<sup>105</sup>

This constitutional provisions were subsequently operationalized in 2009 through the *Plan Nacional para el Buen Vivir* (2009-2013) drafted by Ecuador’s National Planning and Development Secretary, otherwise known as Ecuador’s official development plan.<sup>106</sup> The plan outlines twelve national strategies and twelve objectives including guaranteeing stable and fair work<sup>107</sup>, promoting the quality of life of the population<sup>108</sup>, promoting a healthy and sustainable environment<sup>109</sup> and establishing a sustainable socio-economic system based on solidarity<sup>110</sup>.

These rights were given legal force in caselaw for the first time in the Vilcabamba River case<sup>111</sup> before the Provincial Court of Justice of Loja. In this case the court ruled in favour of the river’s rights over a government undertaken road widening project that threatened the flow of the river. The government project did not requisite environmental impact assessments.<sup>112</sup>

However, critical scholars argue that the continued extractive industries in Ecuador revealed a deep tension and asymmetry in the plan.<sup>113</sup> When the government continuously relies on resource extraction, which lead to “environmental degradation and social conflict”, a contraction is found with the progressive plans laid out in the national plan.<sup>114</sup> Emblematic examples of this extractivism are the cases of oil drilling in the Amazon. The Ecuadorian government decided to drill oil in different indigenous territories in the Amazon (Ishpingo-Tambococha-Tiptini and the Cofan, Siona, and Shuar territories).

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<sup>103</sup> Constitution of the Republic of Ecuador (2008), art 275.

<sup>104</sup> A Sarmiento Martínez, ‘Analysis and Evolution of Environmental Law in Ecuador with the Constitution of 2008 and Its Relation to Political Marketing in the Good Way of Living’ (2023) 21(1) *Human Review: International Humanities Review / Revista Internacional de Humanidades* 107.

<sup>105</sup> Constitution of the Republic of Ecuador (2008), art 280.

<sup>106</sup> A Kothari, F Demaria and A Acosta, ‘Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to Sustainable Development and the Green Economy’ (2014) 57(3–4) *Development* 372.

<sup>107</sup> Secretaría Nacional de Planificación y Desarrollo (SENPLADES), *Plan Nacional para el Buen Vivir 2009–2013* (Quito 2009) obj 6.

<sup>108</sup> *Ibid.*, obj 3.

<sup>109</sup> *Ibid.*, obj 4.

<sup>110</sup> *Ibid.*, obj 11.

<sup>111</sup> Vilcabamba River Case, Judgment No 11121-2011-0010, Loja Provincial Court of Justice (Ecuador, 2011).

<sup>112</sup> N Greene, ‘The First Successful Case of the Rights of Nature Implementation in Ecuador’ (Global Alliance for the Rights of Nature, 2011) <https://www.garn.org/first-ron-case-ecuador/> accessed 5 May 2025; R Wheeler and E Huddle v Provincial Government of Loja, Loja Provincial Court of Justice, Judgment No 11121-2011-0010 (Ecuador, 2011).

<sup>113</sup> C Clarke, ‘Buen Vivir and Neo-Extractivism: Contestations of Power and the Nature of Improvement’ (2016) [https://www.academia.edu/28639929/Buen\\_vivir\\_and\\_neo\\_extractivism\\_contestations\\_of\\_power\\_and\\_the\\_nature\\_of\\_improvement](https://www.academia.edu/28639929/Buen_vivir_and_neo_extractivism_contestations_of_power_and_the_nature_of_improvement) accessed 5 May 2025.

<sup>114</sup> E Gudynas, ‘Buen Vivir: Today’s Tomorrow’ (2011) 54(4) *Development* 443.

Despite the complaints of the indigenous communities, because the oil drilling would violate their territorial rights and their ways of life, the governments proceeded to continue these drilling plans. Another example is the mining in the Andes.<sup>115</sup> The government granted concessions to foreign companies, such as the Chinese Ecuacorriente, to exploit copper in de Andean Highlands. Local communities and environmental activists showed strong resistance to these plans as they argued that the mining would lead to deforestation, water pollution, and the displacement of the local indigenous communities. The government showed no interest in this resistance and continues to promote mining in this area.<sup>116</sup>

(b) Bolivia: *Vivir Bien* and the Ethical Principles of Indigenous Governance

The development of the indigenous concept *Suma Qamaña*, similar to *Sumak Kawsay*, into the constitutional principle *Vivir Bien* in Bolivia, mirrors Ecuador's recognition of *Buen Vivir*, but with notable differences in legal framing and political application.<sup>117</sup> The Bolivian constitution was born with the same background as the Ecuadorian with demonstrations asking for protection of Bolivia's natural resources by different social and indigenous groups. The protesters wanted a reform in state policies and laws. Following these protests, Bolivia's first indigenous president, Evo Morales, was elected in 2003.<sup>118</sup>

The indigenous values and principles are embedded in the preamble of the Bolivian constitution with references to the "sacred Mother Earth" and the mention to a "search for a good life predominates".<sup>119</sup> *Vivir Bien* is further institutionalized in the constitution by assuming and promoting the ethical and moral indigenous principles in their original

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<sup>115</sup> C Eloy, M Guariguata and S Hinojosa, 'Oil Extraction and Indigenous Livelihoods in the Northern Ecuadorian Amazon' (2015) 78 *World Development* 126.

<sup>116</sup> Tearline, 'Copper Mining in Ecuador' (Tearline, 2025) [https://www.tearline.mil/public\\_page/copper-ecuador](https://www.tearline.mil/public_page/copper-ecuador) accessed 5 May 2025; C Kuo, 'Chinese Mining and Indigenous Resistance in Ecuador' (Carnegie Endowment for International Peace, 2021) <https://carnegieendowment.org/research/2021/09/chinese-mining-and-indigenous-resistance-in-ecuador?lang=en> accessed 5 May 2025; Amazon Frontlines, 'One Year On: Ecuador's Failure to Comply with Yasuní Victory Undermines Democracy, Indigenous Rights, Climate Justice' (Amazon Frontlines, 2024) <https://amazonfrontlines.org/chronicles/one-year-on-ecuadors-failure-to-comply-with-yasuni-victory-undermines-democracy-indigenous-rights-climate-justice/> accessed 5 May 2025; Amazon Frontlines and Avaaz Unite to Support Local Resistance Against Oil Drilling in the Ecuadorian Amazon' (Amazon Frontlines, 2024) <https://amazonfrontlines.org/chronicles/amazon-frontlines-and-avaaz-unite-to-support-local-resistance-against-oil-drilling-in-the-ecuadorian-amazon/> accessed 5 May 2025; T Phillips, 'Ecuador Votes to Halt Oil Drilling in Amazonian Biodiversity Hotspot' *The Guardian* (21 August 2023) <https://www.theguardian.com/world/2023/aug/21/ecuador-votes-to-halt-oil-drilling-in-amazonian-biodiversity-hotspot> accessed 5 May 2025.

<sup>117</sup> K G Añaños Bedriñana, B A Hernández Umaña and J A Rodríguez Martín, "Living Well" in the Constitution of Bolivia and the American Declaration on the Rights of Indigenous Peoples: Reflections on Well-Being and the Right to Development' (2021) 18(4) *International Journal of Environmental Research and Public Health* 1833, 7.

<sup>118</sup> P Villavicencio Calzadilla and L J Kotzé, 'Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia' (2018) 7(3) *Transnational Environmental Law* 397, 4; France 24 Observers, 'Indigenous Communities March to Support Evo Morales' Constitutional Reform in Bolivia' (23 October 2008) <https://observers.france24.com/en/20081023-indigenous-communities-march-evo-morales-constitution-reform-bolivia> accessed 5 May 2025.

<sup>119</sup> Constitution of the Plurinational State of Bolivia (2009) Preamble, English translation available at [https://www.constituteproject.org/constitution/Bolivia\\_2009](https://www.constituteproject.org/constitution/Bolivia_2009) accessed 5 May 2025.

languages such as *uma qamaña* (live well) and *ñandereko* (live harmoniously).<sup>120</sup> In contrast to the Ecuadorian constitution, nature is not in itself a bearer of rights, but general environmental rights are provided.<sup>121</sup>

The constitution states the values on which the State of Bolivia is based on. It refers to “values of unity, equality, inclusion, dignity, liberty, solidarity, reciprocity, respect, interdependence, harmony, transparency, equilibrium, equality of opportunity, social and gender equality in participation, common welfare, responsibility, social justice, distribution and redistribution of the social wealth and assets for well-being”<sup>122</sup>, all values that make up *Vivir Bien*.<sup>123</sup> The concept of well-being is also mentioned in the chapter about the economic organisation of the state, notably how the economic model seeks to improve the well-being of all Bolivians.<sup>124</sup> However, *Vivir Bien* is, in contrast to the set of rights in Ecuador, an ethical principle for the state to follow.<sup>125</sup> Bolivians cannot derive direct and enforceable rights from the articles inspired by *Vivir Bien*. This weakens the potential to hold the state accountable.<sup>126</sup> These articles can, however, play a key role in the interpretation and implementation of policies and laws. It can also reinforce claims that are based on direct enforceable rights such as environmental protection<sup>127</sup>, the right to participation of indigenous peoples<sup>128</sup> and socio-economic rights<sup>129</sup>.

This constitution also receives critique on the gap between the constitutional values and the government’s development strategies heavily relying on extractive industries.<sup>130</sup> The soil in the Potosi region in Bolivia contains many minerals such as tin, zinc, silver, and lithium. Current mining projects in the region have led to significant environmental degradation, including deforestation, water contamination due to the toxic chemicals used while mining and soil erosion, causing many risks for both the environment and the public health. Besides, social inequality and labour disputes are poorly considered in this mining industry by the government and by the industry players.<sup>131</sup> Another emblematic example

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<sup>120</sup> Constitution of the Plurinational State of Bolivia (2009) art 8.I.

<sup>121</sup> P Villavicencio Calzadilla and L J Kotzé, ‘Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia’ (2018) 7(3) *Transnational Environmental Law* 397, 5.

<sup>122</sup> Constitution of the Plurinational State of Bolivia (2009) art 8.II.

<sup>123</sup> K G Añaños Bedriñana, B A Hernández Umaña and J A Rodríguez Martín, “Living Well” in the Constitution of Bolivia and the American Declaration on the Rights of Indigenous Peoples: Reflections on Well-Being and the Right to Development’ (2021) 18(4) *International Journal of Environmental Research and Public Health* 1833, 7.

<sup>124</sup> Constitution of the Plurinational State of Bolivia (2009) art 306.

<sup>125</sup> E Gudynas, ‘Buen Vivir: Today’s Tomorrow’ (2011) 54(4) *Development* 443; M I Dolhare and S Rojas-Lizana, ‘The Indigenous Concept of Vivir Bien in the Bolivian Legal Field: A Decolonial Proposal’ (Special issue, *South–South Dialogues: Global Approaches to Decolonial Pedagogies*, 2017) 5.

<sup>126</sup> P Villavicencio Calzadilla and L J Kotzé, ‘Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia’ (2018) 7(3) *Transnational Environmental Law* 397, 13.

<sup>127</sup> Constitution of the Plurinational State of Bolivia (2009) art 33.

<sup>128</sup> *Ibid.*, art 26.II.4.

<sup>129</sup> *Ibid.*, arts 45–62.

<sup>130</sup> C Clarke, ‘Buen Vivir and Neo-Extractivism: Contestations of Power and the Nature of Improvement’ (2016) 26.

<sup>131</sup> Identec Solutions, ‘Mining in Bolivia: Current State of the Industry’ (Identec Solutions, 10 November 2022) <https://www.identecsolutions.com/news/mining-in-bolivia-current-state-of-the-industry> accessed 5 May 2025.

of the tension between the theory of *Vivir Bien* and the extractive industries is the oil extraction in the Bolivian Amazon. Despite its protected status, the Bolivian government keeps promoting oil and gas exploration in this area resulting in deforestation, pollution of the water sources and the disruption of the ecosystem. In addition, they put at risk the livelihoods of local indigenous peoples and farming communities who depend on the land for agriculture and clean water.<sup>132</sup>

(c) Peru: Indigenous Rights and Environmental Resistance Without Constitutional *Buen Vivir*

In contrast to Ecuador and Bolivia, Peru has not constitutionally embedded a post-growth paradigm such as *Buen Vivir* or *Vivir Bien*. Indigenous Quechua principles such as *Ayni* (reciprocity) and *Ayllu* (collective social organization) are however embedded within policies aimed at indigenous rights, cultural preservation, and community governance. *Ayni* relates to the rights of nature embedded in *Buen Vivir*. These indigenous concepts do not discard Western science but see it as an addition to their knowledge. *Ayni* refers to “knowledge interaction and exchange with external actors (government bodies, research and NGOs).”<sup>133</sup>

In Peru, *Buen Vivir* is linked to a broader decolonial movement by challenging the dominant development paradigms and advocating for alternative socio-economic systems.<sup>134</sup> Indigenous communities use these as a practical and cultural tool in their activist discourse to assert for indigenous rights and the right to self-determination.<sup>135</sup>

A concrete example of operationalized *Buen Vivir* in Peru is an indigenous group, Iña Wampisti Nunke, in the Amazon region that established their Autonomous Territorial Government in 2015. While remaining a part of the Peruvian state, they implemented a governance model rooted in their interpretation of *Buen Vivir*. Living in harmony with nature, communal well-being and protection over their indigenous culture are the focus point. This autonomous governance prohibits large scale extractivism and promotes instead traditional agriculture.<sup>136</sup>

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<sup>132</sup> Undisciplined Environments, ‘A Protected Natural Reserve, Oil Extraction and Local Resistance in the Bolivian Amazon’ (2 November 2023) <https://undisciplinedenvironments.org/2023/11/02/a-protected-natural-reserve-oil-extraction-and-local-resistance-in-the-bolivian-amazon/> accessed 5 May 2025.

<sup>133</sup> S Kaul, B Akbulut, F Demaria and J-F Gerber, ‘A Decolonial Approach to Innovation? Building Paths Towards *Buen Vivir*’ (2022) 58(9) *The Journal of Development Studies* 1638, 1641.

<sup>134</sup> *Ibid.*, 1638.

<sup>135</sup> International Institute for Environment and Development, ‘“Sumaq Kawsay”: Alternative Development Rooted in the Wellbeing of Humans and Nature’ (IIED, 2023) <https://biocultural.iied.org/sumaq-kawsay-alternative-development-rooted-wellbeing-humans-and-nature> accessed 9 May 2025.

<sup>136</sup> Ó Espinosa, ‘*Buen Vivir* and the Wampis Nation: Post-extractivist Visions from the Amazon’ (2021) 48(5) *Latin American Perspectives* 91; Mongabay, ‘Peru’s First Autonomous Indigenous Govt Strikes Back Against Deforestation’ (Mongabay, 2019) <https://news.mongabay.com/2019/04/perus-first-autonomous-indigenous-govt-strikes-back-against-deforestation/> accessed 9 May 2025; ICCA Consortium, ‘Iña Wampisti Nunke: The Integral Territory is Not Only a Vision, It is a Way of Life’ in *Territories of Life: 2021 Report* (ICCA Consortium 2021) <https://report.territoriesoflife.org/wp-content/uploads/2021/05/ICCA-Territories-of-Life-2021-Report-Case-Peru-ENG.pdf> accessed 9 May 2025.

(d) Influences in other Latin American countries

The concept of *Buen Vivir* has had major influence beyond Ecuador, Peru and Bolivia, particularly in Colombia and Argentina. Colombia's legal framework shows an increasing recognition of indigenous rights and the rights of nature. It is in harmony with the wider political sensibility of *Buen Vivir*, even if the work itself does not call on the concept. The 1991 Constitution represented a change of paradigm when it recognized Colombia as a multiethnic and multicultural nation and granted special autonomy to Indigenous peoples. It also ensures that biodiversity and the integrity of the ecosystem are conserved.<sup>137</sup> More recently, the Colombian Constitutional Court has acknowledged the legally enforceable rights of nature in a series of landmark cases<sup>138</sup>, such as the recognition of the Amazon as a legal subject, paving the way for an eco-centric jurisprudence that is highly congruent with the underlying philosophy of *Buen Vivir*.

Argentina's legal and political context reflects the country's engagement with principles of sustainability, indigenous rights, and community well-being, concepts that resonate with *Buen Vivir*, though not explicitly enshrined in its constitution.<sup>139</sup> However, the constitution does mention the recognition of "the ethnic and cultural pre-existence of indigenous Argentine peoples" and guarantees "the possession and community property over lands they have traditionally occupied, and to regulate the transfer of other lands fit and sufficient for human development - none of which may be alienable, conveyable or susceptible to encumbrances or attachments".<sup>140</sup>

While *Buen Vivir* has not been fully incorporated into national legal frameworks, its influence on grassroots activism and indigenous resistance continues to shape the discourse around sustainable development in the region.

3. Sub conclusion: Lessons from the Andean experience towards a plural and decolonial Postgrowth

The Andean region offers a compelling lens through which Postgrowth can be rethought in legal and political terms. *Buen Vivir*, and related indigenous philosophies, do not merely echo Postgrowth principles but they challenge and expand them.

Ecuador's Constitution is a landmark in global legal history: it was the first state to grant legal personhood to nature and to integrate *Buen Vivir* as a legal obligation. These

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<sup>137</sup> Constitution of Colombia (1991) arts 7, 286–300.

<sup>138</sup> Constitutional Court of Colombia, Judgment T-622/16 (10 November 2016).

<sup>139</sup> S Morita Carrasco and S Ramírez, "Somos un pueblo, precisamos un territorio porque allí es donde se da la vida indígena; sin territorio no hay identidad como pueblo". *Buen Vivir en Argentina'* (2015) 10(19) *Revista Pueblos y Fronteras Digital* 28.

<sup>140</sup> Constitution of the Argentine Nation (1994) art 75(17).

examples show how indigenous worldviews can shape legal systems to reflect Postgrowth values such as ecological limits, solidarity, and the redefinition of well-being. However, these legal innovations coexist with structural contradictions. Despite their constitutional commitments, extractivist economic models remain dominant, often violating the rights enshrined in law just described as “global legal history”. These practical contradictions must be kept in mind, and more specifically must be prevented, in the process of putting Postgrowth into meaningful practice and not solely into symbolic promises.

A Postgrowth legal framework, if it is meant to be meaningful, must take indigenous epistemologies seriously not as supplements to Western law, but as foundations for a more plural, decolonial legal order. Therefore, the next chapter offers a draft on how Postgrowth could be transformed by the Andean context outlined in this chapter.

#### **D. Conclusion Chapter 2: Andean transformation of Western concept of Postgrowth**

The Andean transformation of Postgrowth is not merely a symbolic appropriation of indigenous language into environmental policy, nor is it a localized translation of a Western ecological critique. Instead, it suggests that a new pluriversal paradigm may develop, one that combines the worldviews of *Buen Vivir* with the systemic critique of Postgrowth to create a cohesive vision of socio-ecological change.

Postgrowth politics provides essential analytical tools to dismantle the logic of continual economic growth, inequality, and destruction of our environment that makes up today's capitalistic modernity. However, it is deeply embedded in Western institutional design and scientific reasoning and often lacks a decolonial perspective. *Buen Vivir*, on the other hand, arises out of indigenous worldviews that reject fundamental tenets of development and is based on collectivity more than individual prosperity; in short, reciprocity and harmony with Nature.

By combining these, we have developed an innovative approach to post-growth theory that engages in decolonial activities and life-affirming attributes rooted in culture but retains post-crisis social critique and structural economic alternatives. This synthesis is already taking shape in countries such as Ecuador and Bolivia, where the constitution has incorporated the concept of *Vivir Bien* and where social movements oppose extractivism and seek alternative forms of organization. However, such processes also expose profound contradictions, as seen in the continued dependence on an extractive centre and progressive legal frameworks, highlighting both inadequacy and controversy within this new paradigm.

Instead of being a plan, it provides a space for dialogue among traditional wisdom, state power, capitalist globalization, and ecological urgency. Therefore, far from being a single model differentiated by its geographical location in the Andes, development itself goes plural if we look at how those ideas have been lived by indigenous peoples and impacted their resistance. The future of Postgrowth is not a single model for everyone. Instead, we can create it using a network of locally based, ecologically sustainable, and culturally

diverse alternatives. Consequently, the Andean input into Postgrowth is not a local adaptation: it constitutes a fundamental break that can bring justice back into balance with sustainability and bring wellbeing back to the front and centre of the world stage again.

#### **IV. Progressive realisation of socio-economic human rights**

Human rights law and development were two different unconnected islands for a long time on the international agendas. However, since the beginning of the 2000's a bridge between both has been built.<sup>141</sup> A transition to a Postgrowth-inspired-society will without doubt have consequences for the (social) protections within the current welfare systems. Postgrowth will not seek to demolish the concept of welfare systems, on the contrary. However, it will be differently built than now and will come with many challenges before the so-called 'sustainable welfare system' can be set in place.<sup>142</sup> Besides, the environmental crisis will have/already has many implications on social risks and social protections within welfare states and these welfare states are not organized to mitigate. E.g., extreme weather increases the risk of health issues, of losing shelter, of decreasing the quality of livelihoods.<sup>143</sup>

That is why in this chapter it will be researched how far the obligations of socio-economic human rights reach to find a gap where Postgrowth could be applied without breached those rights. First the history of socio-economic human rights will be set out shortly (Section 1). Following, the international legal framework analysed through its treaties and the bridging principles in these treaties, progressive realisation, and minimum core obligations (Section 2). Lastly the bridging principles from the international framework will be researched through the Latin American framework, both by the regional Inter-American treaty and the domestic legislation in the Andean countries (Section 3).

#### **V. Socio economic human rights**

##### **A. History**

Human rights are the rights that every human being has because they are a human being, no other conditions must be fulfilled to enjoy these.<sup>144</sup> Traditionally human rights are sub-

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<sup>141</sup> P Jonis and K Stokke, 'Introduction – Democratising Development: The Politics of Socio-Economic Rights' in *Democratising Development: The Politics of Socio-Economic Rights in South Africa* (Martinus Nijhoff Publishers 2005) 1.

<sup>142</sup> L Nanning, P Bridgen, K Zimmerman, M Büchs and M Mesiäisletho, 'Climate Crisis and Social Protection – From Worker Protection to Post-growth Transformation?' (2023) 23 *Social Policy and Society* 701.

<sup>143</sup> L Nanning, P Bridgen, K Zimmerman, M Büchs and M Mesiäisletho, 'Climate Crisis and Social Protection – From Worker Protection to Post-growth Transformation?' (2023) 23 *Social Policy and Society* 695.

<sup>144</sup> Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of Which They Are the Author (Art. 15(1)(c) of the Covenant)' (12 January 2006) UN Doc E/C.12/GC/17.

divided into first, second and third generation rights. Or in other words: civil and political rights; socio, economic and cultural rights; and group and collective rights. Each generation entails both positive and negative obligations.<sup>145</sup> The distinction between first generation and second-generation rights is mainly made intuitively.<sup>146</sup> The main reason for this distinction is attributed to the difference between negative and positive obligations, and thus the argument that socio-economic human rights ask (financial) resources and positive actions in order to be fulfilled.<sup>147</sup> However, when people use their 'political rights' the chances of famine occurring in that state are smaller, so these rights are obviously interlinked.<sup>148</sup> This is because in societies where people can exercise the right to vote or have freedom of speech and press, governments are more accountable to their citizens. They thus risk being voted out during the next elections if critical issues such as food shortages and famine occur. Separating them in watertight categories is thus doubtful, as both generations entail both positive and negative obligations, and could have a negative impact on their realisation.<sup>149</sup>

Economic, social and cultural (ESC) rights have been around since long before the establishment of the United Nations and thus the ratification of the International Covenant on Economic, Social and Cultural Rights. They first appeared in international law in the International Labour Organisation Constitution (1919) and the Charter of the League of Nations (1919) and also in several domestic constitutions<sup>150, 151</sup> However, the Universal Declaration of Human Right (UDHR), adopted by the UN General Assembly in 1948, marked a pivotal moment in the international recognition of ESC rights by setting out a broad framework.<sup>152</sup> During the 60 years between the adoption of the UDHR in 1948 and the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by the UN General Assembly in 2008 the discussions on human rights law were mostly dominated by the status of ESC rights in the broader legal framework.<sup>153</sup> This discussion was mostly ideologically inspired between the eastern and western political blocks during the Cold War resulting in the adoption of two different Covenants namely the International Covenant on Civil and Political Rights (ICCPR) and

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<sup>145</sup> A Eide and A Rosas, 'Economic, Social and Cultural Rights' in D Moeckli, S Shah and S Sivakumaran (eds), *The Oxford Handbook of International Human Rights Law* (OUP 2013) 560.

<sup>146</sup> I Trispiotis, 'Socio-Economic Rights: Legally Enforceable or Just Aspirational?' (2010) 8 *Opticon* 1826 2.

<sup>147</sup> P Jonis and K Stokke, 'Introduction – Democratising Development: The Politics of Socio-Economic Rights' in *Democratising Development: The Politics of Socio-Economic Rights in South Africa* (Martinus Nijhoff Publishers 2005) 3.

<sup>148</sup> OHCHR, 'Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights' (December 2008), 2-10.

<sup>149</sup> Trispiotis I, 'Socio-Economic Rights: Legally Enforceable or Just Aspirational?' (2010) 8 *Opticon* 1826, 2.

<sup>150</sup> such as in the Mexican Constitution (1917), the German Weimar Constitution (1919) and the Spanish Constitution (1931)

<sup>151</sup> C Courtis, 'Standards to Make ESC Rights Justiciable: A Summary Exploration' (2009) *Erasmus Law Review* 379.

<sup>152</sup> A Eide and A Rosas, 'Economic, Social and Cultural Rights' in D Moeckli, S Shah and S Sivakumaran (eds), *The Oxford Handbook of International Human Rights Law* (OUP 2013) 3.

<sup>153</sup> O De Schutter, *Economic, Social and Cultural Rights as Human Rights: An Introduction* (Edward Elgar 2013) 2.

the International Covenant on Economic, Social and Cultural Rights (ICESCR) after the UDHR.<sup>154</sup>

## **B. International legal Framework**

### 1. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR bundles internationally agreed upon ESC rights. The Covenant was adopted by the United Nations General Assembly on the 16<sup>th</sup> of December 1966 and entered into force on the 3<sup>rd</sup> of January 1976. In November of 2024, 173 states are state parties to the convention. Notwithstanding the fact that several countries made reservations to the convention.<sup>155</sup> State Parties become responsible to apply all the obligations in the covenant and ensure that their domestic law is compatible to it. When these obligations are breached, the State Party is responsible and thus accountable to the international community, the other ratifying states and their citizens and residents.<sup>156</sup> It also protects vulnerable groups through the right to social security<sup>157</sup>, the protection of families and specifically for mothers and children<sup>158</sup>, the right to an adequate living standard (such as food, housing and clothing)<sup>159</sup>, the right to the highest attainable health standard (both mentally and physically)<sup>160</sup> and the right to education<sup>161</sup>. Lastly, the Covenant also protects cultural rights.<sup>162</sup>

The implementation of these rights is monitored by a body of independent experts, Committee on Economic, Social and Cultural Rights. The Committee engages in meaningful dialogues with State Parties, evaluates the application of the ICESCR-principles, and explores ways to enhance its implementation and enforcement.<sup>163</sup>

The Covenant stays one of the most relevant treaties within the UN treaty system. The UN General Assembly regularly emphasizes the importance of States' strictest compliance with the ICESCR.<sup>164</sup>

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<sup>154</sup> D Cerqueira, 'Enforceability of Economic, Social and Cultural Rights: Historical Background, Legal Basis and Misleading Assumptions' (2016) *Justicia en las Américas* 1.

<sup>155</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>156</sup> *Ibid.*, art 6.

<sup>157</sup> *Ibid.*, art 9.

<sup>158</sup> *Ibid.*, art 10.

<sup>159</sup> *Ibid.*, art 11.

<sup>160</sup> *Ibid.*, art 12.

<sup>161</sup> *Ibid.*, art 13.

<sup>162</sup> *Ibid.*, art 15.

<sup>163</sup> OHCHR, 'Treaty Bodies: Committee on Economic, Social and Cultural Rights' <https://www.ohchr.org/en/treaty-bodies/cescr> accessed 28 November 2024.

<sup>164</sup> UNGA Res 40/115 (13 December 1985) para 8.

## 2. Optional Protocol to the International Covenant on Civil and Political Rights (OPIC)

After the entry into force of the ICESCR, ESC rights were recognized but there was no way to invoke these rights judicially. The Optional Protocol to the International Covenant on Civil and Political Rights (OPIC) was adopted 42 years after the adoption of the ICESCR to change something about this lack of enforcement. The Protocol was adopted by the United Nations General Assembly on the 10<sup>th</sup> of December 2008 and entered into force on the 5<sup>th</sup> of May 2013.<sup>165</sup> This marked the beginning of the still ongoing process of giving victims of ESC rights violations a legal voice and hold breaching governments accountable for those breaches.<sup>166</sup>

The Protocol enables the Committee on Economic, Social and Cultural Rights to judge complaints brought by individuals or groups when their rights under the ICESCR are breached.<sup>167</sup> All rights protected by the ICESCR can be invoked.<sup>168</sup> In order for a complaint to be admissible before the Committee on ESC Rights all domestic remedies must be exhausted, the complaint must be against a state that ratified the OPIC and the complaint must *ratione materiae* be related to rights in the ICESCR.<sup>169</sup>

Complaints can be assessed in three ways: individual communication (by an individual or a group against a State Party)<sup>170</sup>, interstate communication (a State Party against another State Party)<sup>171</sup> or an inquiry procedure by the Committee itself after receiving “reliable information indicating grave or systematic violations by a State Party”<sup>172</sup>.

## 3. Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

Even though ESC right were acknowledged by the ICESCR, and these rights became legally enforceable through the OPIC a gap was found in international human rights law. The Covenant and Protocol were only written to create territorial obligations for the state parties. However, the world has changed a lot since 1966 such as the process of globalisation, both as an economic as a social phenomenon. Because of globalisation the number of international transactions between States, but also between individuals,

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<sup>165</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) UNGA Res 63/117.

<sup>166</sup> Geneva Academy of International Humanitarian Law and Human Rights, *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – Academic Brief no 2* (2013) 46.

<sup>167</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art 1.

<sup>168</sup> Geneva Academy of International Humanitarian Law and Human Rights, *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – Academic Brief no 2* (2013) 7.

<sup>169</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art 3.

<sup>170</sup> *Ibid.*, arts 2-10.

<sup>171</sup> *Ibid.*, art 10.

<sup>172</sup> *Ibid.*, arts 11-12.

companies and (non-)governmental organisations grew significantly.<sup>173</sup> Questions were raised about the missing link to extraterritorial obligations.<sup>174</sup>

Legal research about this issue was organised by Maastricht University and the International Commission of Jurists in 2011 resulted in a new way of approached ESC rights: a focus on the obligations of states instead of a focus on the rights of the individuals. Thanks to this shift in focus, ESC rights became more than pragmatic ideas but were seen as enforceable rights.<sup>175</sup> An important remark about the Maastricht principles is thus that these were not a result of political decision-making but of legal research made by different legal experts. Therefore, there are no State Parties or compliance mechanisms to these Principles, but they serve as a help for the interpretation of ESC rights.<sup>176</sup> However, they still serve as a referential document for analysing extraterritorial human rights<sup>177</sup> and as an inspiration for later inspiration for General Comments by the Committee on Economic, Social and Cultural Rights.<sup>178</sup>

According to the Maastricht Principles States, following the internationally accepted typology, the obligation to comply with internationally recognized ESC rights territorially and extraterritorially imposes three kinds of duties on States: the obligation to respect, the obligation to protect and the obligation to fulfil ESC rights.<sup>179</sup> The Principles indicate that the primary obligation for extraterritorial principles is on the territorial state.<sup>180</sup> The obligation for those territorial states to comply extraterritorially exists in three situations namely: in “situations over which it exercises authority or effective control”, in “situations over which State acts or omissions bring about foreseeable effects on the enjoyment of ESC rights” or in “situations in which the State (...) is in a position to exercise decisive influence or to take measures to realize ESC rights extraterritorially”.<sup>181</sup>

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<sup>173</sup> F Coomans, 'The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights' (2011) *Human Rights Law Review* 2.

<sup>174</sup> ETOs, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2013) 3.

<sup>175</sup> O De Schutter, *Economic, Social and Cultural Rights as Human Rights: An Introduction* (Edward Elgar 2013) 7; O De Schutter and others, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' [2012] *Human Rights Quarterly* 1084.

<sup>176</sup> ETOs, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2013) 4.

<sup>177</sup> W Vandenhoe and A Vandebogaerde, 'Voorbij de Territoriale Staat? De Maastricht Principles over Extraterritoriale Mensenrechten' (2012) *Tijdschrift voor Mensenrechten* 10.

<sup>178</sup> CESCR, 'General Comment No 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017) UN Doc E/C.12/GC/24.

<sup>179</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2013) Principle 3; W Vandenhoe and A Vandebogaerde, 'Voorbij de Territoriale Staat? De Maastricht Principles over Extraterritoriale Mensenrechten' (2012) *Tijdschrift voor Mensenrechten* 11.

<sup>180</sup> W Vandenhoe and A Vandebogaerde, 'Voorbij de Territoriale Staat? De Maastricht Principles over Extraterritoriale Mensenrechten' (2012) *Tijdschrift voor Mensenrechten* 11.

<sup>181</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2013) Principle 9.

Besides the three documents described above other United Nations conventions also protect ESC rights. They are focused on marginalized groups (women, children, and persons with disabilities) that require extra protection. The Convention on the Elimination of All Forms of Discrimination Against Women (1979) is widely ratified<sup>182</sup> and partly dedicated to ESC rights. The Convention addresses the structural barriers that women encounter to fully participate in the economic, social, and cultural life and obliges State Parties to eliminate discrimination and ensure equal rights for women in the fields of education<sup>183</sup>, employment<sup>184</sup>, healthcare<sup>185</sup>. The same goes for the Convention on the Rights of the Child (1989)<sup>186</sup> but for children and the Convention on the Rights of Persons with Disabilities (2006)<sup>187</sup> for persons with disabilities.<sup>188</sup> These conventions highlight the intersectionality of ESC rights.

The relationship between the United Nations and the International Labour Organisation (ILO) is strongly visible in the human rights area, mainly in the area of ESC rights seen the scope of the work of the ILO.<sup>189</sup> Different ILO Conventions exist on core ESC right principles such as equality, non-discrimination and the rights to decent work. These principles existed thus already in the context of labour by the ILO but later widened in scope by the adoption of the ICESCR.<sup>190</sup> Examples of this are the ILO conventions on 'the Right to Organise and Collective Bargaining'<sup>191</sup> and on 'Employment Discrimination'<sup>192</sup> and the articles ensuring the right to work<sup>193</sup>, favourable working condition<sup>194</sup>, right to form trade unions<sup>195</sup> of the ICESCR.

#### 4. Domestic ESC-litigation

International human rights law is built around the International Bill of Human Rights. This Bill consists of three texts namely, the UDHR, ICESCR, and the ICCPR and their respective optional protocols. However, ESC rights are also found in different national and

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<sup>182</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

<sup>183</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art 10.

<sup>184</sup> *Ibid.*, art 11.

<sup>185</sup> *Ibid.*, art 12.

<sup>186</sup> Convention on the Rights of the Child, arts 24, 28, 29 and 32 (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

<sup>187</sup> Convention on the Rights of Persons with Disabilities, arts 24, 27 and 28 (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

<sup>188</sup> A Eide and A Rosas, 'Economic, Social and Cultural Rights' in D Moeckli and others (eds), *The Oxford Handbook of International Human Rights Law* (OUP 2013) 11.

<sup>189</sup> L Sibbel, 'ILO Conventions and the Covenant on Economic, Social and Cultural Rights: One Goal, Two Systems' (2001) *Dialogue on Globalization* 51.

<sup>190</sup> *Ibid.*, 53.

<sup>191</sup> ILO Convention No 98 concerning the Right to Organise and Collective Bargaining (adopted 1 July 1949, entered into force 18 July 1951) 96 UNTS 257.

<sup>192</sup> ILO Convention No 111 concerning Discrimination in Respect of Employment and Occupation (adopted 25 June 1958, entered into force 15 June 1960) 362 UNTS 31.

<sup>193</sup> International Covenant on Economic, Social and Cultural Rights, art 6.

<sup>194</sup> *Ibid.*, art 7.

<sup>195</sup> *Ibid.*, art 8.

regional legal systems.<sup>196</sup> The international commitments, such as ratifications of the declaration and covenants of the International Bill of Rights, must further be enforced by the domestic legal framework.<sup>197</sup>

Domestic jurisprudence on ESC rights is being highly encouraged by the CESCR. The Committee stated in their General Comment on domestic application: that the ICESCR must be applied ‘directly’ and ‘immediately’, that the means used to apply the ICESCR must be ‘appropriate’ and must be subjected to ‘review’, that the chosen means must be ‘adequate’ and ‘effective’, that domestic monitoring and accountability mechanisms must be set in place and that victims of breaches of ESC rights must be able to seek domestic remedies through the domestic legal system.<sup>198</sup> States must thus integrate ESC rights in their national human rights laws.<sup>199</sup> While the ICESCR does not oblige State Parties “to incorporate its provisions in domestic law”, the CESCR finds incorporation of the ICESCR in domestic law desirable as it is in their point of view the most “appropriate and effective way of applying the Covenant”. This domestic protection is especially important as domestic legal institutions are (supposed to be) more accessible to individuals.<sup>200</sup>

Generally, ESC rights on a domestic level are protected through constitutional provisions.<sup>201</sup> In 2019, solely seventeen constitutions all over the world did not include at least one ESC right.<sup>202</sup> Each State Party enjoys a margin of discretion while adopting ICESCR measures<sup>203</sup> the ways and means State Parties use for the implementation of the ICESCR will thus obviously vary.

## 5. Obligations within the ESC rights-framework

The right to state protection implies a positive obligation of the state to take action in order to achieve the satisfaction of these rights (“freedom through the state”).<sup>204</sup> It also implies “freedom from the state” in the way that the state cannot interfere with your work, family life ...<sup>205</sup> The state’s obligations can be summarized in three words: the duty to

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<sup>196</sup> OHCHR, ‘Fact Sheet No 33: Frequently Asked Questions on Economic, Social and Cultural Rights’ (December 2008) 2.

<sup>197</sup> P N Guyer, S Fukuda-Parr, S Randolph and L M Daniels, ‘Measuring the Progressive Realization of Economic and Social Human Rights in Brazil: A Disaggregated Economic and Social Rights Fulfillment Index’ (2009) 10 Economic Rights Working Papers, University of Connecticut, Human Rights Institute, 9.

<sup>198</sup> CESCR, ‘General Comment No 9: The Domestic Application of the Covenant’ (3 December 1998) UN Doc E/C.12/1998/24.

<sup>199</sup> CESCR, ‘General Comment No 13: The Right to Education (Art 13 of the Covenant)’ (8 December 1999) UN Doc E/C.12/1999/10.

<sup>200</sup> M Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart 2009) 149-53.

<sup>201</sup> *Ibid.*, 151.

<sup>202</sup> E Rosevaar, R Hirschl and C Jung, ‘Justiciable and Aspirational Economic and Social Rights in National Constitutions’ in C Jung, R Hirschl and E Rosevaar (eds), *The Future of Economic and Social Rights* (CUP 2019) 37.

<sup>203</sup> CESCR, ‘General Comment No 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art 3 of the Covenant)’ (11 August 2005) UN Doc E/C.12/2005/4.

<sup>204</sup> J Muthui, ‘Panorama of Progressive Realisation of Socio-Economic Rights’ (2022) SSRN 5.

<sup>205</sup> OHCHR, ‘Fact Sheet No 33: Frequently Asked Questions on Economic, Social and Cultural Rights’ (December 2008) 2.

respect, to protect and to fulfil ESC rights. Respecting means that the state must “refrain from interfering with the right.” Protecting implies the prevention of the interference of the enjoyment of the ESC right. Lastly, fulfilling obliges the state to adopt appropriate measures to realize the right.<sup>206</sup>

The rights are not absolute but “can only be limited in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”<sup>207</sup> This limitation in the Covenant is called the general limitation clause<sup>208</sup> and is put in place to protect the rights of individuals (rather than allow states to restrict rights).<sup>209</sup>

Article 2 of the ICESCR establishes a general interpretation principle where each State Party must undertake steps to the maximum of their available resources to progressively achieve the full realization of the ESC rights.<sup>210</sup> These obligations of the ICESCR consist of both obligations of conduct and obligations of result.<sup>211</sup> These are reflected in seven different sorts of legal obligations listed in the ICESCR: taking steps<sup>212</sup>; guaranteeing<sup>213</sup>, ensuring<sup>214</sup>, recognizing<sup>215</sup>, agreeing<sup>216</sup>, submitting<sup>217</sup> and promoting<sup>218, 219</sup>. While State Parties have a margin of discretion in adopting the complementary measures to fulfil their obligations to the ICESCR, compliance with this general interpretation rule must be ensured.<sup>220</sup>

#### (a) Progressive realisation

States have the duty to respect, protect and fulfil socio economic rights. The CESCR recognizes that “full realization of all ESC rights will generally not be able to be achieved in a short period of time.”<sup>221</sup> That is why the ICESCR states that ESC rights must be

<sup>206</sup> OHCHR, 'Fact Sheet No 33: Frequently Asked Questions on Economic, Social and Cultural Rights' (December 2008) 11.

<sup>207</sup> International Covenant on Economic, Social and Cultural Rights, art 8.

<sup>208</sup> International Justice Resource Center, 'Economic, Social and Cultural Rights' [https://ijrcenter.org/thematic-research-guides/economic-social-and-cultural-rights-2/#REALIZING\\_ECONOMIC\\_SOCIAL\\_AND\\_CULTURAL\\_RIGHTS](https://ijrcenter.org/thematic-research-guides/economic-social-and-cultural-rights-2/#REALIZING_ECONOMIC_SOCIAL_AND_CULTURAL_RIGHTS) accessed 14 July 2024.

<sup>209</sup> CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (art 12 of the Covenant)' (11 August 2000) UN Doc E/C.12/2000/4, para 28.

<sup>210</sup> International Covenant on Economic, Social and Cultural Rights, art 2.

<sup>211</sup> CESCR, 'General Comment No 13: The Right to Education (art 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10, para 3.

<sup>212</sup> International Covenant on Economic, Social and Cultural Rights, art 2(1).

<sup>213</sup> *Ibid.*, art 2(2)

<sup>214</sup> *Ibid.*, art 3.

<sup>215</sup> *Ibid.*, arts 6–16

<sup>216</sup> *Ibid.*, art 23.

<sup>217</sup> *Ibid.*, art 16.

<sup>218</sup> *Ibid.*, art 1(3).

<sup>219</sup> B Ramcharan, *Judicial Protection of Economic, Social and Cultural Rights: Cases and Materials* (Martinus Nijhoff Publishers 2005) 19–20.

<sup>220</sup> CESCR, 'General Comment No 13: The Right to Education (art 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10.

<sup>221</sup> CESCR, 'General Comment No 3: The Nature of States Parties' Obligations (art 2(1) of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 9

realized progressively.<sup>222</sup> The importance of progressive realisation principle has been repeated and re-highlighted during the United Nations Conference on Sustainable Development in 2012 with a statement about drinking water: “We commit to the progressive realization of access to safe and affordable drinking water and basic sanitation for all, as necessary for poverty eradication, women's empowerment and to protect human health, and to significantly improve the implementation of integrated water resource management at all levels as appropriate”.<sup>223</sup> This statement also highlights the extra-territoriality of ESC rights again and the corresponding extra-territorial obligations that come with it.<sup>224</sup> Progressive realisation means that states are required to fully achieve the human rights over a reasonable period of time. States must “move as expeditiously and effectively as possible towards that goal.”<sup>225</sup> This “aspirational element” is the reason some critics state that ESC rights are not justiciable rights and lack enforcement.<sup>226</sup> However, there are still different minimum core obligations that will be elaborated in the next sub-chapter.

States must thus take appropriate steps to ensure the continuous improvement of the enjoyment of ESC rights.<sup>227</sup> Advances in the fulfilment of rights may thus in principle not be regressive.<sup>228</sup> Appropriate in this case means taking full advantage of the available resources, even if these are inadequate.<sup>229</sup> These progressive steps should not solely be taken individually but also internationally, through assistance and/or co-operation.<sup>230</sup> ‘Resources’ are interpreted broadly here. They are not restricted to financial, societal, or human resources. This implies that the obligations to states may differ from state to state or within states from time to time depending on the available resources on that moment.<sup>231</sup> Whenever the available resources are lacking in order to fulfil the obligation, the state must strive to fulfil an enjoyment that is as wide as possible under the given

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<sup>222</sup> International Covenant on Economic, Social and Cultural Rights, art 2(1); OHCHR, 'Fact Sheet No 33: Frequently Asked Questions on Economic, Social and Cultural Rights' (December 2008) 13; L Chenwi, *Monitoring the Progressive Realisation of Socio-Economic Rights* (University of the Western Cape 2010) 19

<sup>223</sup> United Nations, 'UN System Implementation Follow-Up to Rio+20' <https://sustainabledevelopment.un.org/rio20> accessed 19 January 2025.

<sup>224</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2013) Principle 29.

<sup>225</sup> CESCR, 'General Comment No 3: The Nature of States Parties' Obligations (art 2(1) of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 9

<sup>226</sup> C Courtis, 'Standards to Make ESC Rights Justiciable: A Summary Exploration' (2009) *Erasmus Law Review* 382.

<sup>227</sup> OHCHR, 'Economic, Social and Cultural Rights' <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights#:~:text=Progressive%20realization%3A%20States%20are%20required,of%20these%20rights%20over%20time> accessed 18 April 2024.

<sup>228</sup> International Covenant on Economic, Social and Cultural Rights, art 3(1); L Chenwi, 'Unpacking “Progressive Realisation”: Its Relation to Resources, Minimum Core and Reasonableness' [2013] 46 *De Jure Law Journal* 745.

<sup>229</sup> CESCR, 'General Comment No 3: The Nature of States Parties' Obligations (art 2(1) of the Covenant)' (14 December 1990) UN Doc E/1991/23; L Chenwi, *Monitoring the Progressive Realisation of Socio-Economic Rights* (University of the Western Cape 2010) 23.

<sup>230</sup> International Covenant on Economic, Social and Cultural Rights, art 2.

<sup>231</sup> L Chenwi, *Monitoring the Progressive Realisation of Socio-Economic Rights* (University of the Western Cape 2010) 749.

circumstances.<sup>232</sup> In addition, the State Party is obliged to ensure that the use of these inadequate resources is as protective and fulfilling as possible. They must pay extra attention to “the most vulnerable and marginalised individuals and groups.”<sup>233</sup>

However, a few exceptions within the Covenant on ESC rights and progressive realisation are made. The CESCR identified several articles from the Covenant that must be implemented immediately.<sup>234</sup> These are: the equal right of men and women to enjoy ESC rights<sup>235</sup>, fair wages and equal remuneration of equal work with a guarantee for women’s work conditions<sup>236</sup>, the right to join unions and strikes<sup>237</sup>, the protection of children from economic and social exploitation<sup>238</sup>, the right to free and compulsory primary education<sup>239</sup>, the freedom of picking and establishing educational institutions<sup>240</sup>, the freedom of scientific research and creative activities<sup>241</sup>.

Retrogressive measures are in principle not permitted. However, the prohibition is not absolute.<sup>242</sup> In the few cases where it could be considered, a weighty justification is needed. It must be proven that this measure for example was needed to achieve equity or to protect marginalised groups that could be aggrieved in the process of realising the ESC right in question.<sup>243</sup> This weighty justification needs “to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”.<sup>244</sup> The CESCR evaluates whether or not a retrogressive measure violates the ICESCR through six criteria. It takes the State Parties’ level of development into consideration together with the severity of the alleged breach. Further, it evaluates the economic state of the State Party: whether the State Party was undergoing a period of economic recession or other difficult economic situations and if there are any existing claims on the limited resources of the State Party (for example because of (inter)national armed conflicts, or severe natural disasters). Then it reviews the State Parties response to the lack of resources. This includes whether it identified low(er) cost

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<sup>232</sup> CESCR, 'General Comment No 3: The Nature of States Parties' Obligations (art 2(1) of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 11.

<sup>233</sup> CESCR, 'Concluding Observations on the Combined Initial and Second to Fourth Periodic Reports of Cambodia' UN Doc E/C.12/KHM/CO/1 (2009) para 3.

<sup>234</sup> CESCR, 'General Comment No 3: The Nature of States Parties' Obligations (art 2(1) of the Covenant)' (14 December 1990) UN Doc E/1991/23, para 5.

<sup>235</sup> International Covenant on Economic, Social and Cultural Rights, art 3.

<sup>236</sup> Ibid., art 7(a)(i).

<sup>237</sup> Ibid., art 8.

<sup>238</sup> Ibid., art 10(3).

<sup>239</sup> Ibid., art 10(2)(a).

<sup>240</sup> Ibid., art 13(3)–(4).

<sup>241</sup> Ibid., art 15(3).

<sup>242</sup> C Courtis, 'Standards to Make ESC Rights Justiciable: A Summary Exploration' (2009) Erasmus Law Review 193.

<sup>243</sup> CESCR, 'General Comment No 13: The Right to Education (art 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10; CESCR, 'General Comment No 19: The Right to Social Security (art 9 of the Covenant)' (4 February 2008) UN Doc E/C.12/GC/19; L Chenwi, *Monitoring the Progressive Realisation of Socio-Economic Rights* (University of the Western Cape 2010) 19.

<sup>244</sup> CESCR, 'General Comment No 13: The Right to Education (art 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10, para 44; J Tasioulas, 'Minimum Core Obligations: Human Rights in the Here and Now' (2017) *The World Bank* 13.

options or sought cooperation or assistance from the international community before implementing these retrogressive measures.<sup>245</sup>

If and when these rights have been violated, legal enforcement is possible. National, regional, and international mechanisms decide on the breaches and therefore contribute to the understanding of the right followed by fitting remedies.<sup>246</sup> The main international compliance monitoring body is the Committee on Economic, Social and Cultural Rights (CESCR) established in 1979. The CESCR-members are eighteen experts within the human rights law field and are elected with due consideration to geographical diversity.<sup>247</sup> States and non-governmental groups must or can, respectively, report to it.<sup>248</sup> The CESCR then takes these reports into consideration and provides guidance to states that need it in order to enhance the realisation of socio- economic rights in their states.<sup>249</sup>

(b) Minimum core obligations

Progressive realisation depends on the resources that are available to the state.<sup>250</sup> It allows the necessary flexibility that is needed when applying ESC rights in different contexts that each have their own difficulties. However, it does not erase the *ratio legis* and the purpose of these rights.<sup>251</sup> These obligations must be realised in order to ensure a dignified life and provide basic means for people.<sup>252</sup> That is why they cannot be delayed but must be complied with immediately.<sup>253</sup> Therefore, notwithstanding the principle of progressive realisation, the General Committee of the ICESCR obliged the governments of the State Parties to realize minimum levels of protection.<sup>254</sup> This minimum core will form a universally social welfare standard for individuals.<sup>255</sup>

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<sup>245</sup> CESCR, UN Doc E/C.12/2007/1 (2007) para 10.

<sup>246</sup> United Nations Human Rights Office of the High Commissioner, 'Economic, Social and Cultural Rights' <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights#:~:text=Progressive%20realization%3A%20States%20are%20required.of%20these%20rights%20over%20time> accessed 18 April 2025.

<sup>247</sup> P Alston, 'The Committee on Economic, Social and Cultural Rights' (2020) *NYU Law and Economics Research Paper 2*.

<sup>248</sup> International Covenant on Economic, Social and Cultural Rights, arts 16–17.

<sup>249</sup> L Chenwi, *Monitoring the Progressive Realisation of Socio-Economic Rights* (University of the Western Cape 2010) 39.

<sup>250</sup> L Chenwi, 'Unpacking "Progressive Realisation": Its Relation to Resources, Minimum Core and Reasonableness' (2013) 46 *De Jure Law Journal* 749.

<sup>251</sup> J Tasioulas, 'Minimum Core Obligations: Human Rights in the Here and Now' (2017) *The World Bank* 13.

<sup>252</sup> D Bilchitz, 'Giving Socio-Economic Rights Teeth: The Minimum Core and Its Importance' (2002) 69 *South African Law Journal* 484.

<sup>253</sup> J Tasioulas, 'Minimum Core Obligations: Human Rights in the Here and Now' (2017) *The World Bank*

<sup>254</sup> D Bilchitz, 'Giving Socio-Economic Rights Teeth: The Minimum Core and Its Importance' (2002) 69 *South African Law Journal* 486.

<sup>255</sup> I Trispiotis, 'Socio-Economic Rights: Legally Enforceable or Just Aspirational?' (2010) 8 *Opticon* 1826 8.

The provisions in the ICESCR do not mention minimum core obligations *verbatim*. This lacuna left a lot of room for loopholes and states tried to avoid their obligations by using the argument of a lack of resources. However, the CESCR interpreted article 2 of the ICESCR to include “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.”<sup>256</sup> . Minimum core obligations are characterized by the immediate effect, in contrast to the progressivity of the other ESC obligations, and their non-derogability. This distinction is justified by the CESCR by the special value of these obligations. Because these obligations are non-derogable and must be immediately ensured, they should be enforceable through a court, either domestic, national, or international.<sup>257</sup>

There is no set list on which provisions of the ICESCR are minimum core obligations and which not. The CESCR interpretes the ‘minimum core obligations’-level of these provisions in its general comments. It does so by analysing each right through five steps. It first identifies the human right and then identifies the scope of this right. Further, it identifies the content of the chosen obligation and their sub-set obligations. Lastly, the consequences of the non-fulfilment of the identified obligation are decided upon.<sup>258</sup> Some specific examples of these minimum core obligations, relating to the right to education<sup>259</sup>, are ensuring the “the right of access to public educational institutions and programmes on a non-discriminatory basis” and “adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education”.<sup>260</sup>

## 6. Sub conclusion: The tensions in international human rights law

The international legal framework surrounding ESC rights illustrates the advances that have been made and the obstacles to be overcome to transform these ESC rights from rhetorical promises into practical achievements. The ICESCR lays down a firm vision of state obligations, but it initially missed this important bridge in the form of enforcement mechanisms. The Optional Protocol only partially fills that gap years before its existence. This evolution reflects the more general difficulty that pervades all branches of international law, in which there is a tension between the sovereignty and discretion of states and the requirements of accountability and justiciability.

Another significant layer was added by the Maastricht Principles that brought in extraterritorial obligations. In our interconnected world, state laws and corporate actors are connected to them, impacting human rights across the globe. However, this globalization of violence posed challenging questions about jurisdiction and enforcement. Now, the Maastricht Principles require states to go beyond their boundaries and realize

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<sup>256</sup> CESCR, 'General Comment No 3: The Nature of States Parties' Obligations (art 2(1) of the Covenant)' (14 December 1990) UN Doc E/1991/23.

<sup>257</sup> K Shields, 'The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education' (2017) *The World Bank* 4.

<sup>258</sup> J Tasioulas, 'Minimum Core Obligations: Human Rights in the Here and Now' (2017) *The World Bank* 19

<sup>259</sup> International Covenant on Economic, Social and Cultural Rights, art 13

<sup>260</sup> CESCR, 'General Comment No 13: The Right to Education (art 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10.

that the duties of states are not merely inside states but also outside, international, as their act is felt economically and socially throughout the globe.

Within this complex legal landscape, the concept of progressive realization and minimum core obligations serve as the cornerstones. Progressive realization gives states the flexibility to fulfil their obligations under the ICESCR obligations based on their available resources. However, the minimum core obligations establish the non-flexible baseline. The essential elements of the ESC rights must be guaranteed immediately irrespective of the state's current resources. This prevents the "over flexibility" of the ESC rights where they erode into a distant promise for whenever available resources might occur. These minimum core obligations express that ESC-framework is not only a guide for the future but also a strong commitment to every person, especially the most vulnerable ones.

### **C. Latin American framework**

#### **1. Justiciability and enforcement of ESC rights in Latin America**

##### **(a) Pact of San Jose**

In 1978 the American Convention on Human Rights<sup>261</sup>, otherwise known as the Pact of San Jose, entered into force and created two institutions, the commission and the court,<sup>262</sup> charged with the task of promoting and protecting human rights in the Americas.<sup>263</sup> The Pact has twenty member states, of which are Peru, Bolivia and Ecuador.<sup>264</sup> It contains a comprehensive catalogue of civil and political rights, such as the right to life<sup>265</sup>, freedom from torture<sup>266</sup>, and fair trial guarantees<sup>267</sup>. However, ESC rights are not listed individually. ESC rights are found in the Additional Protocol to the Convention (1988)<sup>268</sup>, otherwise known as the Protocol of San Salvador.<sup>269</sup>

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<sup>261</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36 (Pact of San Jose).

<sup>262</sup> American Convention on Human Rights, art 33.

<sup>263</sup> W B Burke-White, 'Human Rights in the Inter-American System' (2005) 2 *International Studies Journal* 3.

<sup>264</sup> OAS, 'American Convention on Human Rights' [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm) accessed 22 May 2025.

<sup>265</sup> American Convention on Human Rights, art 4.

<sup>266</sup> *Ibid.*, art 5.

<sup>267</sup> *Ibid.*, art 8.

<sup>268</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69.

<sup>269</sup> Organization of American States, 'English FAQs: Human Rights in the Inter-American System' (2009) <https://www.oas.org/ipsp/images/English%20FAQs.pdf> accessed 21 May 2025.

## (b) Inter-American Court on Human Rights (IACHR)

The Pact of San Jose is directly invocable before the Inter-American Court on Human Rights (IACHR). It is important to note that, even though the commission can make observations and recommendations, the ESC rights from the Protocol of San Salvador are not directly invocable before the IACHR except for the right to education<sup>270</sup> and the right to organize and join unions<sup>271</sup>.

Under the San Jose Pact, the IACHR performs three main functions. Through its contentious role, the IACHR determines whether a state parties has violated rights protected by the San Jose Pact or related treaties and monitors compliance with its judgments.<sup>272</sup> These related treaties are: Inter-American Convention to Prevent and Punish Torture (1985)<sup>273</sup>, Inter-American Convention on Forced Disappearance of Persons (1994)<sup>274</sup>, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994)<sup>275</sup>, Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999)<sup>276</sup>, and the earlier discussed Protocol of San Salvador. It may also order provisional measures in cases that are serious, urgent, and involve risk of irreparable harm, provided these conditions are met *prima facie*.<sup>277</sup> These additional related treaties are solely usable by the IACHR if the state involved in the specific case has ratified them.<sup>278</sup> In its advisory capacity, the IACHR issues opinions at the request of state parties or organs on the compatibility of domestic laws with the San Jose Pact and the interpretation of human rights treaties within the Inter-American system.<sup>279</sup>

The IACHR remains, until this day, too weak to ensure the (ESC) human rights protections of all citizens from the Americas. This weakness is founded in lack of priority and funding of the member states.<sup>280</sup> However, it is a good example of how human rights promotion and protection can be offered in regions where there is less political unity as in

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<sup>270</sup> Protocol of San Salvador, art 13.

<sup>271</sup> *Ibid.*, art 8.

<sup>272</sup> American Convention on Human Rights, art 63(1).

<sup>273</sup> Inter-American Convention to Prevent and Punish Torture (adopted 9 December 1985, entered into force 28 February 1987) OAS Treaty Series No 67.

<sup>274</sup> Inter-American Convention on Forced Disappearance of Persons (adopted 9 June 1994, entered into force 28 March 1996) OAS Treaty Series No 68.

<sup>275</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) OAS Treaty Series No 92.

<sup>276</sup> Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (adopted 7 June 1999, entered into force 14 September 2001) OAS Treaty Series No 160.

<sup>277</sup> American Convention on Human Rights, art 63(2).

<sup>278</sup> American Convention on Human Rights, art 62(3); Case of the “Street Children” (Villagrán-Morales et al.) v Guatemala, Judgment of 19 November 1999, Series C No 63, para 193; Inter-American Court of Human Rights, ‘Other Treaties’ Subject to the Advisory Jurisdiction of the Court (Art 64 American Convention on Human Rights), Advisory Opinion OC-1/82 (24 September 1982) Series A No 1, para 43.

<sup>279</sup> American Convention on Human Rights, art 64.

<sup>280</sup> J M Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2nd edn, CUP 2013) 24.

for example the European Union and its therefore stronger regional human rights protection.<sup>281</sup>

- (c) Is the concept of progressive realisation applicable to the inter-American regional human rights framework?

Article 26 of the Convention is headed “Progressive Development” and obligates the state parties “to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means ...”.<sup>282</sup> However, it is important to note that this article does not provide enforceable rights for citizens and no further specification about the meaning of this article has been given by the Organization of American States (AOS).<sup>283</sup>

Later, in the Additional Protocol of San Salvador, article 1 states that state parties must “... adopt the necessary measures ... to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations ...”.<sup>284</sup>

When comparing article 2(1) ICESCR with article 26 ACHR, some differences are found. The language of the ACHR remains broad and general. It does not reference to specific rights or concrete, immediate obligations. This lends itself to a flexible approach, where gradual progress and international collaboration are prioritized but no detailed mechanisms for enforcement or resource allocation are prescribed. In contrast, the ICESCR sets out a more detailed and binding framework. States are obliged to use the maximum of their available resources to realize the rights set out in the Covenant. Thus, while both instruments recognize the principle of progressive development/realization, the ICESCR provides a more concrete and enforceable standard for state compliance than the ACHR.<sup>285</sup>

- (d) Case law examples

The IACHR took a stand on the principle of progressive development for the first time in a case in 2017 in the case of *Lagos del Campo v. Peru* regarding the rights of freedom of

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<sup>281</sup> W B Burke-White, 'Human Rights in the Inter-American System' (2005) 2 *International Studies Journal* 2.

<sup>282</sup> American Convention on Human Rights, art 26.

<sup>283</sup> W B Burke-White, 'Human Rights in the Inter-American System' (2005) 2 *International Studies Journal* 7; 'The Justiciability of Economic, Social and Cultural Rights under the American Convention' (29 May 2018) <https://dplfblog.com/2018/05/29/the-justiciability-of-economic-social-and-cultural-rights-under-the-american-convention/> accessed 22 May 2025.

<sup>284</sup> Optional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), art 1.

<sup>285</sup> E Salmón, *Los Derechos Económicos, Sociales y Culturales en el Sistema Interamericano* (Instituto de Democracia y Derechos Humanos PUCP 2010) 16.

expression of an employee.<sup>286</sup> The use of this principle for the first time was groundbreaking as before ESC rights were judged in relation to other rights, such as the right to life<sup>287</sup> or the right to personal integrity<sup>288, 289</sup>. This paved the way for a broader interpretation of ESC rights as resulting in direct obligations.

Following, case law has built further on this landmark case. In *Cuscul Pivaral v. Guatemala* (2018), the Court emphasized the duty to ensure access to health care for people with HIV,<sup>290</sup> based on the minimum core of the right, which is comparable to the minimum core obligations of the ICESCR system.<sup>291</sup> Similarly, in *Petroperú v. Peru* (2020), about the right to job stability, the IACHR judged the obligations in the light of progressive realization.<sup>292</sup>

These cases illustrate the IACHR evolving approach towards recognizing ESC rights as directly enforceable under the principles of progressive development and the minimum core of the right, mirroring the progressive realisation and minimum core obligations of the UN framework. Hereby, the IACHR affirmed that it reviews ESC rights not merely as aspirational but as carrying concrete, judicially reviewable duties for states.

## 2. Domestic justiciability and enforcement in Ecuador, Bolivia, and Peru

As understood from previous chapters, the principle of progressive realisation and the doctrine of minimum core obligations are central to the enforcement of ESC rights under international law. While Ecuador, Bolivia and Peru are all bound by the ICESCR and the Protocol of San Salvador, the domestic interpretation and application of these principles vary. This section offers a country-by-country overview of how Peru, Bolivia, and Ecuador have implemented these doctrines within their respective constitutional and judicial frameworks.

### (a) Ecuador

In Ecuador it is constitutionally embedded that the realization of rights must be progressive and non-retrogressive.<sup>293</sup> This principle of progressivity was regularly endorsed by the Ecuadorian Constitutional Court.<sup>294</sup> Therefore Ecuador has been

<sup>286</sup> *Lagos del Campo v Peru* (Preliminary Objections, Merits, Reparations and Costs) IACtHR Series C No 340 (31 August 2017).

<sup>287</sup> American Convention on Human Rights, art 5.

<sup>288</sup> *Ibid.*, art 4.

<sup>289</sup> Georgetown Law, 'The Inter-American Court of Human Rights Issues Ruling on the Progressive Realization of the Right to Health' <https://oneill.law.georgetown.edu/the-inter-american-court-of-human-rights-issues-ruling-on-the-progressive-realization-of-the-right-to-health/> accessed 22 May 2025; 'The Justiciability of Economic, Social and Cultural Rights under the American Convention' (29 May 2018) <https://dplfblog.com/2018/05/29/the-justiciability-of-economic-social-and-cultural-rights-under-the-american-convention/> accessed 22 May 2025.

<sup>290</sup> *Cuscul Pivaral et al. v Guatemala*, IACtHR (Judgment of 23 August 2018) Series C No 359

<sup>291</sup> See chapter 3.3.1.2 Minimum Core Obligations.

<sup>292</sup> *Díaz Loreto et al. v Peru* (Petroperú), IACtHR (Judgment of 27 November 2020) Series C No 423.

<sup>293</sup> Constitution of Ecuador, art 11(8).

<sup>294</sup> M J Peralta-Macías, G K Robles-Zambrano, R Eedyah and M Atencio-González, 'Vulneración al principio de progresividad en la Ley Orgánica de apoyo humanitario en Ecuador' (2021) *Iustitia Socialis* 4.

highlighted by scholars, such as Langford, as the leader in Latin America for justiciability of ESC rights because of the explicit mention in their constitution and the consequent legal doctrine.<sup>295</sup>

An exemplary landmark case regarding this principle is the case *001-10-SIN-CC* before the Ecuadorian Constitutional Court.<sup>296</sup> The petitioners argues that the State had failed to guarantee their minimum standards of the right to personal integrity<sup>297</sup>, health<sup>298</sup>, and human dignity<sup>299</sup> (in this case in detention facilities). The Court stressed that the principle of progressivity does not justify inactions from the State, but that obligations towards realizing the human rights must be continuous and immediate. Resource availability may not be used as an excuse, regarding the Court, as the State must prove that it is using its available resources to their maximum capacity.<sup>300</sup>

(b) Bolivia

In Bolivia, the principle of progressive realisation is, just as in Ecuador, constitutionally embedded for the right to health, education, and work.<sup>301</sup> The Bolivian Constitutional Court actively incorporated this principle in its jurisprudence combining it with other constitutional clauses and international human rights treaties.<sup>302</sup>

Key cases illustrating the conditions of fulfilling the principle of progressive realization in the Bolivian jurisdiction is *Sentencia Constitucional Plurinacional 2258/2010-R*<sup>303</sup> and *0583/2020-S2*<sup>304</sup>. The Court emphasises in both cases, likewise to the illustrative case from Ecuador, that progressive realisation cannot include regression and demands immediate action from the State. The lack of economic resources was, again, not an acceptable excuse by the Court to justify the lack of action by the State.

(c) Peru

In Peru, the domestic enforcement of ESC rights through the principle of progressive realisation remains cautious and conditional as there is no specific constitutional clause providing it. The Peruvian Constitutional Court tends to only interpret socio-economic

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<sup>295</sup> M Langford, *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (CUP 2008) 238–240.

<sup>296</sup> Corte Constitucional del Ecuador, *Sentencia 001-10-SIN-CC* (27 Jan 2010).

<sup>297</sup> Constitution of Ecuador, art 2(1).

<sup>298</sup> *Ibid.*, art 7.

<sup>299</sup> *Ibid.*, preamble and art 1.

<sup>300</sup> Corte Constitucional del Ecuador, *Sentencia No 001-10-SIN-CC* (2010).

<sup>301</sup> Constitution of Bolivia, art 9(6).

<sup>302</sup> D Landau, 'Socioeconomic Rights in Latin America: Closing the Gap between Aspiration and Reality' (2023) *57 Revista Derecho del Estado* 34.

<sup>303</sup> *Sentencia Constitucional Plurinacional 2258/2010-R* (Bolivia, Tribunal Constitucional Plurinacional, 6 December 2010).

<sup>304</sup> *Sentencia Constitucional Plurinacional 0583/2020-S2* (Bolivia, Tribunal Constitucional Plurinacional, 10 September 2020).

rights as enforceable when they are directly connected to civil and political rights (such as the right to life or personal integrity).<sup>305</sup>

This approach is for example seen in the *Azanca Alhelí Meza García v. EsSalud* case.<sup>306</sup> In this landmark case, judged by the Peruvian Constitutional Court, the right to health (in this case the failure to provide an organ transplant) was only enforced because it could be linked to the right to life<sup>307</sup> and personal integrity<sup>308</sup>. The Constitutional Court thus only treated the obligation of progressive realisation because of the intersection with the traditional, immediately enforceable, right. Resulting in the lack of enforcement of the principle of progressive development whenever such intersection cannot be found.<sup>309</sup>

### 3. Sub conclusion: Regional ambitions and domestic realities

The Latin American framework for the justiciability and enforcement of ESC rights presents a complex landscape of regional and domestic mechanisms marked by progress and persistent limitations. At the regional level, the Inter-American system offers a relatively underdeveloped structure for enforcing ESC rights. While the Protocol of San Salvador nominally incorporates these rights, only education and unionization are justifiable before the IACHR. Moreover, though acknowledged in Article 26 of the American Convention and Article 1 of the Protocol, the principle of progressive realization remains vaguely formulated and unenforceable in practice, especially compared to the more robust obligations under the ICESCR.

Nonetheless, recent jurisprudence from the IACHR, particularly from *Lagos del Campo*, *Cuscul Pivaral*, and *Petroperú*, signals an emerging willingness to interpret ESC rights as directly enforceable through the lenses of progressive realization and minimum core obligations. While the judicial evolution identified here is limited by structural deficiencies and weak support provided by the state, it does confirm the capacity of regional human rights law to develop as a source of substantive protections for socio-economic rights.

At the national level, Ecuador and Bolivia are countries where the ESC rights norm has become well crystallized through constitutional recognition and judicial activism. Their constitutional courts have employed the principle of non-regression to hold states to account and have dismissed resource constraints as an acceptable justification for inaction. However, Peru is an exception, giving effect to the ESC rights only to the extent that they intersect with civil and political rights. This divergence highlights the importance of examining how well domestic legal systems are equipped to implement international and regional human rights standards, and of assessing both the strengths

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<sup>305</sup> E Salmón, *Los Derechos Económicos, Sociales y Culturales en el Sistema Interamericano* (Instituto de Democracia y Derechos Humanos PUCP, Lima 2010) 7.

<sup>306</sup> *Azanca Alhelí Meza García v EsSalud y el Ministerio de Salud*, Exp No 2945-2003-AA/TC, Judgment of 25 November 2004

<sup>307</sup> Constitution of Peru, art 2(1).

<sup>308</sup> *Ibid.*, art 2(24)(h).

<sup>309</sup> E Salmón, *Los Derechos Económicos, Sociales y Culturales en el Sistema Interamericano* (Instituto de Democracia y Derechos Humanos PUCP, Lima 2010) 7.

and shortcomings of the current framework for protecting and promoting ESC rights in the Andean region.

**D. Conclusion Chapter 3: What does the principle of progressive realization entail within the international and jurisdictional jurisdictions?**

The principle of progressive realization entails that states are legally obliged to take deliberate, concrete, and targeted steps toward fully fulfilling economic, social, and cultural (ESC) rights using the maximum available resources. While it allows for gradual implementation, it is not a license for delay or inaction. Crucially, it includes immediate duties: guaranteeing minimum core obligations, acting without discrimination, and avoiding retrogressive measures unless fully justified.

This principle is firmly embedded and supported by detailed interpretative guidance at the international level, particularly under the ICESCR. The UN Committee on Economic, Social, and Cultural Rights has clarified that progressive realization must be accompanied by measurable progress and subject to oversight, even with limited resources.

The legal statement of this principle varies in regional and national legal orders. Some systems operate with robust constitutional and jurisprudential frameworks for the progressive realization content standard, which is conceived as both a performance and accountability standard; others treat the principle as underdeveloped or conditional on its nesting within civil and political rights.

These divergences illustrate that although international law provides the normative foundation, the extent to which it is implemented will be significantly influenced by judicial interpretation, constitutional recognition, and political will at the regional and national levels.

Indeed, progressive realization is not an abstract aspiration but a flexible legal tool that combines openness to the evolution of law with binding responsibilities. It is a bridge between resource-compliance limitations and the transcendent principle of universal entitlement to socio-economic rights.

**VI. Postgrowth Constitutionalism in the Andean Region**

**A. Conclusion: Towards a Postgrowth Constitutionalism in the Andean Region**

This study has critically examined whether and how the progressive realization of ESC rights can be reconciled with the emerging Postgrowth paradigm, with particular attention to the Andean region. Despite apparent tensions between these frameworks, especially given ESC rights' traditional reliance on economic growth for implementation, this thesis argues that reconciliation is feasible and normatively desirable, provided that

underlying assumptions about development, well-being, and legal obligations are redefined.

### **B. Reframing Progressive Realization Beyond Growth**

The doctrine of progressive realization, as embedded in international human rights law through Article 2(1) of the ICESCR, requires states to realize ESC rights "to the maximum of their available resources." While this has often been interpreted in growth-centric terms, Postgrowth scholarship offers a compelling reorientation. By prioritizing sufficiency over accumulation and redistribution over-extraction, Postgrowth does not negate the realization of socio-economic rights but proposes alternative means of fulfilling them within ecological boundaries. In this reconceptualization, resources are not merely fiscal but include non-monetized forms of wealth, land, community labour, and traditional knowledge, which are often more sustainably and equitably distributed.

Minimum core obligations, as defined by the UN Committee on Economic, Social, and Cultural Rights, further support this reinterpretation. These obligations establish a baseline of essential rights (e.g., access to food, water, health, shelter) that must be guaranteed immediately and independently of economic performance. Thus, a Postgrowth framework, designed around human dignity and ecological integrity, can comply with, and even reinforce the imperative of progressive realization.

### **C. Legal Adaptations for a Postgrowth Framework**

Reconciling Postgrowth with ESC rights require legal adaptation at multiple levels. First, available resources must be broadened to include ecological assets, social capital, and unpaid care work. Second, legal systems must move away from growth-based indicators (such as GDP) as benchmarks for rights fulfilment and instead adopt holistic well-being metrics. Third, domestic and constitutional legal orders should integrate the rights of nature, community-based property regimes, and local autonomy as core legal principles, not peripheral concerns.

Furthermore, courts and legislatures must operationalize a rights-based approach to sustainability, recognizing that certain forms of economic development may undermine long-term rights fulfilment. Legal doctrine should evolve to reflect the structural risks of extractivism and affirm the legitimacy of policies limiting growth to protect ecosystems and human rights.

### **D. Limitations of Existing Andean Constitutional Models**

While the constitutions of Ecuador and Bolivia have been internationally lauded for embedding indigenous concepts such as *Buen Vivir* and *Vivir Bien*, they remain constrained by deep structural contradictions. On paper, these constitutional models articulate an ecological and communal vision of development that resonates strongly with Postgrowth. However, their normative aspirations are largely undermined by the continual insistence on extractive industries, which are frequently rationalized regarding the necessity to fund public projects.

The enforceability of these posterior growth constitutional provisions is also different. In Bolivia, *Vivir Bien* has no direct justiciability, which can limit its potential in rights-based litigation. In Ecuador, where legal codification is more solid, constitutional guarantees of the rights of nature are regularly superseded by state development needs. These discrepancies underscore the weakness of the regime of symbolic constitutionalism when not accompanied by structural economic change and political responsibility.

#### **E. The Case for Postgrowth Constitutionalism**

In response to these tensions, this thesis suggests creating a Postgrowth constitutionalism: a paradigm of law in the making that recasts the constitutional purposes of the state in and through ecological sustainability, social justice, and multiple ontologies.

Postgrowth constitutionalism would treat the limits of economic growth not as obstacles originating from the natural world to be brushed aside but as normative parameters within which rights, economies, and governance could be realized.

This paradigm would manifest as the explicit constitutionalisation of planetary boundaries, the institutionalization of non-anthropocentric rights regimes, and the elevation of indigenous legal epistemologies as co-equal authority sources.

Second, it would also shift public and private power towards prioritizing the redistribution of wealth and power, the decommodification of all basic goods and services, and the democratic reorganization of economic decision-making based on the needs and priorities of local communities and ecosystems.

#### **F. Conclusion**

The Andes region is crucial for understanding the world-scale problem of aligning human rights and ecological limits, from its constitutional experiments to indigenous philosophies. Instead of incompatible ESC rights and Postgrowth, this thesis has shown that an ESC rights-Postgrowth synthesis will entail a re-articulation of both: a goal that extends beyond growth-conditioned welfare on the one hand and rights understood as liberal-individualist on the other.

What we get is not a single blueprint but a plural and context-specific process of legal and political invention, one that seeks to decolonize development, revalorize non-Western epistemologies, and re-anchor human rights in the realities of planetary existence. In this way, bringing progressive realization and Postgrowth into alignment is not only a theoretical possibility but also an imperative ethical and legal undertaking. It is a summons to redefine constitutionalism, not as a device to spur growth but as a means to sustain life.