Article

NQHR

Netherlands Quarterly of Human Rights
2021, Vol. 39(1) 53–72

DOI: 10.1177/0924051921994753
journals.sagepub.com/home/nqh
SAGE

Economic, social and cultural rights and their dependence on the economic growth paradigm: Evidence from the ICESCR system

Matthias Petel
University of Louvain (UCLouvain), Belgium

Norman Vander Putten
Université Saint-Louis – Bruxelles, Belgium

Abstract
In light of the expanding critical academic literature on the social and ecological limits to a growth-based paradigm, this article investigates the ties between economic, social and cultural rights (ESC rights) and economic growth in the case law of the Committee on Economic, Social and Cultural Rights (CESCR). It shows that the CESCR assumes economic growth to generally improve the realisation of ESC rights because it increases States' financial capacity and leads to employment creation. However, while the Committee deems that growth models should be inclusive, the CESCR never adopts a critical perspective on the possibility or desirability to pursue economic growth indefinitely. Despite recent evidence on the contested possibility to decouple economic activity from resource use, the Committee's recent ecological turn remains embedded in the growth paradigm. This article argues that the Committee should advocate towards decreasing the dependence of ESC rights on growth, especially when a State has reached a certain level of affluence.

Keywords
Economic, social and cultural rights – international covenant on economic, social and cultural rights – political economy of human rights – economic growth – post-growth

Corresponding author:
Matthias Petel, UCLouvain Clos des Chanterelles 14, Brussels 1050, Belgium.
E-mail: matthias.petel@uclouvain.be

1. INTRODUCTION

Do economic, social and cultural rights support the growth paradigm, defined as the 'material, institutional, and mental infrastructure in which economic growth is conceived as necessary, good, and imperative',[1] or do they challenge it? This question might seem surprising at first sight, as human rights and economic growth are fundamentally different in nature. On the one hand, the human rights field is dominated by the idea that each human being possesses inherent rights, which leads mainly to deontological and qualitative analyses.[2] On the other hand, concerns related to economic growth require adopting a consequentialist perspective, according to which the indicator of interest is the evolution of the total market value of all the finished goods and services produced whereas individual situations are only indirectly significant, through their impact on the aggregate.[3]

Although there is 'relatively little dialogue' between economists and human rights scholars,[4] the links between fundamental rights and economic growth have intrigued many authors, mainly economists, who have been investigating the question for more than fifty years.[5] The main question they have sought to answer is: if the overarching goal is economic growth, should human rights be promoted or, conversely, limited? Some have examined the same links by reversing the question: does economic growth sustain human rights, or does it hinder them? While it is shown in this article that the results of this research are mixed, there is something that unites the vast majority of scholars in this field: they implicitly subscribe to the growth paradigm.

However, the centrality of economic growth is increasingly contested in academia. Arguing that growth systematically increases environmental pressure and does not necessarily bring wellbeing or equality,[6] some scholars advocate for a planned reduction of economic activity – that is, degrowth[7] –, while others believe that economic growth should be stationary, on the one hand, or irrelevant in the public debate[8], on the other. In contrast to these post-growth writings,[9] certain authors and the vast majority of international organisations do not challenge the desirability or possibility of unlimited growth per se, but emphasise the necessity for growth to become green and inclusive.[10]

1. Timothée Parrique, 'The Political Economy of Degrowth' (Université Clermont Auvergne - Stockholm University 2019) 43. See also Antoine Bailleux and François Ost, 'Six Hypothèses à l'épreuve Du Paradigme Croissanciel' (2016) 77 Revue interdisciplinaire d'études juridiques 27.
2. Sakiko Fukuda-Parr, 'The Metrics of Human Rights: Complementarities of the Human Development and Capabilities Approach' (2011) 12 Journal of Human Development and Capabilities 73, 78.
3. Edward Anderson, 'Economics and Human Rights' in Bard Andreassen, Hans-Otto Sano and Siobhan McInerney-Lankford (eds), *Research Methods in Human Rights. A Handbook* (Edward Elgar 2017) 94.
4. ibid.
5. For an early example, see John Feild and Melvin Mister, 'Civil Rights, Employment Opportunity, and Economic Growth' (1965) 43 University of Detroit Law Journal 235.
6. Those critiques were recently popularised by Tim Jackson's world-famous book, Tim Jackson, *Prosperity without Growth* (Routledge 2016).
7. Jason Hickel, 'Degrowth: a theory of radical abundance' (2019) 87 Real-World Economics Review 54.
8. Isabelle Cassiers, Kevin Maréchal and Dominique Méda, *Post-Growth Economics and Society: Exploring the Paths of a Social and Ecological Transition* (Routledge 2019).
9. Post-growth is used here as an umbrella term. For a detailed comparison of those movements, see Jeroen C.J.M. van den Bergh and Giorgos Kallis, 'Growth, A-Growth or Degrowth to Stay within Planetary Boundaries?' (2012) 46 Journal of Economic Issues 909.
10. See e.g. Andrew MacAffee, *More from Less: The Surprising Story of How We Learned to Prosper Using Fewer Resources—and What Happens Next* (Simon and Schuster 2019).

In light of this critical literature and the debates surrounding it, this article contributes to the contemporary understanding of the political economy of human rights[11] by investigating the ties between economic, social and cultural rights ('ESC rights') and growth. The question it raises is: from a legal perspective, is economic growth a positive, necessary, sufficient or irrelevant means for the realization of ESC rights? To answer it, a formalistic approach, which describes the legal parlance of human rights instruments with respect to economic growth, is adopted. Therefore, the following pages do not examine the actual impact of fundamental rights on economic growth (or vice versa) from a *law and economics* perspective, but rather look at the formal legal stance on it. They do so by analysing the International Covenant on Economic, Social and Cultural Rights ('Covenant' or 'ICESCR') system[12].

The ICESCR and the documents produced by the Committee on Economic, Social and Cultural Rights ('Committee' or 'CESCR') have been chosen as empirical material for two reasons. First, it is the most widespread legally binding instrument providing for ESC rights[13]. Second, since its entry into force in 1976, the Covenant's system has led to the publication of a large number of documents, making it possible to draw robust conclusions. The Committee, which is composed of eighteen independent experts, was established in 1985 and mandated to carry out the monitoring functions assigned to the United Nations Economic and Social Council.[14] It reviews the five-yearly reports of States on their compliance vis-à-vis the Covenant, which results in the publication of Concluding Observations, and adopts General Comments, which set out its working methods, interprets treaty provisions or elaborates on thematic issues. The CESCR also publishes Statements on its own initiative. Finally, under the Optional Protocol to the ICESCR adopted in 2008,[15] the Committee has the competence to adopt Views on communications submitted by individuals or groups under the jurisdiction of a signatory to the Protocol.

This article is divided in three sections. Section 1 provides a brief review of the existing literature concerning the links between human rights and economic growth. Section 2 then analyses in depth the stances taken by the Committee on economic growth exposing the results of our descriptive investigation. Our main finding is that the Committee assumes that economic growth is generally conducive to greater realisation of ESC rights because it increases States' financial capacity and leads to employment creation. However, the CESCR refrains from regarding economic growth as a *sufficient* condition for the securement of ESC rights. It furthermore considers that economic growth is positive only if it is inclusive enough. Nevertheless, the treaty body never takes a critical perspective on the possibility or desirability to pursue economic growth

11. Manuel Couret Branco, *Political Economy for Human Rights* (Routledge 2019); Bas de Gaay Fortman, *Political Economy of Human Rights: Rights, Realities and Realization* (Routledge 2011).
12. The ICESCR was adopted and opened for signature on 16 December 1966 (UNGA resolution A/6546, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, and Optional Protocol to the International Covenant on Civil and Political Rights, A/ 5647 (16 December 1966)). For a recent paper using a similar methodology regarding ICESCR, see Kári Hólmar Ragnarsson, 'Humanising Not Transformative? The UN Committee on Economic, Social and Cultural Rights and Economic Inequality in OECD Countries 2008-19' (2020) London Review of International Law 1.
13. On 25th March 2020, the ICESCR was ratified by 170 countries.
14. Economic and Social Council resolution 1985/17, Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the ICESCR, E/RES/1985/17 (28 May 1985). The Council elects the independent experts.
15. UNGA resolution 63/117, Optional Protocol to the ICESCR, A/RES/63/117 (10 December 2008). The Protocol was opened for signature on 24 September 2009 and entered into force on 5 May 2013.

indefinitely. Section 3 critically discusses these stances. In light of the Committee's recent ecological turn and of the growing empirical evidence regarding the social and environmental externalities of economic growth, it is argued that it should adapt its position.

This article seeks to fill two gaps identified in the existing literature. First, the vast majority of studies in the field focus on civil liberties and personal integrity rights. In contrast, while acknowledging that human rights are interdependent and indivisible, this contribution examines the perspective of ESC rights. Second, human rights legal scholars are mainly absent from the debate regarding the fundamental rights-growth relationship. More generally, questions regarding the centrality of growth in policy making are rarely discussed in legal literature.[16] To the best of our knowledge, there is no study on the legal stance of human rights on growth which takes case law[17] as a starting point. Some authors have, however, investigated the ties between fundamental rights and the concept of economic development,[18] which covers not only economic growth but also other economic metrics such as average income levels or income distribution indicators.[19] This article aims to feed into such research.

2. HUMAN RIGHTS AND ECONOMIC GROWTH: MUTUALLY EXCLUSIVE OR BENEFICIAL?

The links between human rights, whether civil, political, economic, social or cultural, and economic growth have been studied within different fields and from various approaches. These studies can be schematically grouped into two categories: some conclusions support the idea that fundamental rights and economic growth are mutually beneficial, while others imply the opposite. In both cases, human rights are considered either as *means* (or, conversely, as constraints) in the quest for a desirable economic growth, or as *goals* that may (or may not) be attained through the pursuit of valuable economic growth.

When considered as a *means*, human rights have often been deemed supportive of economic growth. In their quantitative study on 'The Economic Effects of Human Rights', Blume and Voigt show that a high level of enjoyment of civil, political, economic, social or cultural human rights are generally significant drivers of economic growth.[20] While the results of this cross-country analysis vary according to the kind of human rights examined and depend on the determinant of economic

16. See, however, Antoine Bailleux (ed), *Le droit en transition. Les clés juridiques d'une prospérité sans croissance* (Publications de l'USLB 2020); Olivier De Schutter, 'The Cage and the Labyrinth: Escaping the Addiction to Growth' in Isabelle Cassiers, Kevin Marechal and Dominique Méda (eds), *Post-growth Economics and Society. Exploring the Paths of a Social and Ecological Transition* (Routledge 2019).
17. The term 'case law' is understood here in an unorthodox wide sense and includes the Committee's Views following individual complaints, General Comments, Concluding Observations and Statements which do admittedly not have a binding nature.
18. See e.g. Peter Uvin, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development' (2007) 17 Development in Practice 597; Philip Alston, 'Making Space for New Human Rights: The Case of the Right to Development' (1988) 1 Harvard Human Rights Yearbook 3; Canan Gunduz, 'Human Rights and Development: The World Bank's Need for a Consistent Approach' (2004) LSE International Development Working Papers.
19. Sigrid Alexandra Koob, Stinne Skriver Jorgensen and Hans-Otto Sano, 'Human Rights and Economic Growth. An Econometric Analysis of Freedom and Participation Rights' 2017 Matters of Concern - Human Rights Research Papers 1, 9.
20. Lorenz Blume and Stefan Voigt, 'The Economic Effects of Human Rights' (2007) 60 Kyklos 509.

growth that is researched, the overall conclusion is that none of the fundamental rights have a negative impact on growth. Furthermore, in a particularly enlightening econometric study led by the Danish Institute for Human Rights,[21] Koob, Jorgensen and Sano show how 'freedom and participation rights' – thus in this case mainly civil and political rights – generally have a significant positive causal effect on economic growth in the long run.[22] Extensive quantitative literature points in the same direction.[23]

The underlying idea of these studies is that human rights foster productivity. Herath, for instance, explains on the ground of quantitative evidence how human rights and economic growth are mutually supportive in the case of the right to education: 'Education is a source of human capital and therefore, in endogenous growth models it is included as a part of capital. Education also promotes the entrepreneurial skills of people as well as technology. [. . .] Thus, education promotes growth'.[24] The same type of argument is developed by Herath for property rights, freedom of expression or the prohibition of discrimination.

When considering human rights as *goals*, several authors have underlined how growth is a necessary condition to realising them. Using a qualitative approach, Feild and Mister already considered economic growth as 'essential' to guaranteeing civil and political rights of minorities in the US in 1965 [25]. In their review of theoretical and empirical studies, Sano and Marslev also conclude that economic development is undoubtedly important for securing human rights.[26] Using data from 138 countries between 1965 and 2010, Cole demonstrates for instance that economic growth has a favourable impact on human rights although the results decrease in depth and robustness when focusing on high income countries.[27]

In the same vein, Sengupta, the former UN appointed independent expert on the right to development, considered in his sixth report that: 'economic growth has a critical instrumental role in facilitating the realization of the interdependent and indivisible human rights, comprising the right to development'.[28] In other words, because the term 'development' is usually understood as a wide-ranging multidimensional concept (with economic, social and cultural aspects), which includes but is not limited to economic growth, 'the growth dimension of the right to development is both an objective and a means'.[29]

The authors mentioned here remain silent on the critiques of growth. They deem – explicitly or implicitly – this mutual alliance to always be positive. The following statement of the Danish

21. Koob, Jorgensen and Sano (n 20).
22. This result, however, does not hold true when examining data related to the Middle East, Northern Africa, South Asia and the Americas.
23. For a recent literature review, see Kristoffer Marslev and Hans-Otto Sano, 'The Economy of Human Rights' 2016/2 The Danish Institute for Human Rights.
24. Tikiri Nimal Herath, 'Economics of Human Rights in Market Economies: Are They Growth and Development Friendly According to the Empirical Evidence' (2008) 20 Sri Lanka Journal of International Law 181, 193. For further evidence on the role played by education in the promotion of growth, Robert J. Barro and Xavier I. Sala-i-Martin, *Economic Growth* (McGraw-Hill 1995).
25. Feild and Mister (n 5) 245.
26. Marslev and Sano (n 24).
27. Wade M Cole, 'Too Much of a Good Thing? Economic Growth and Human Rights, 1960 to 2010' (2017) 67 Social Science Research 72.
28. Independent Expert on the Right to Development, 6th Report, *Implementing the right to development in the current global context*, E/CN.4/2004/WG.18/2 (17 February 2004) para 6.
29. Independent Expert on the Right to Development, 3 rd Report, E/CN.4/2001/WG.18/2 (2 January 2001) para 14.

Institute for Human Rights illustrates this perspective particularly well: the conclusion of their study 'supports [the view] (...) that human rights may not only be the *right thing* to do in normative terms but might actually be the *smart thing* to do in economic terms'.[30]

In striking contrast to what has been elaborated upon above, another line of research has concluded that there is a trade-off between human rights on the one hand, and economic growth on the other. By analysing the effects of growth-based policies on human rights, several authors conclude that there is a negative impact of the former on the latter. Bantekas, for instance, demonstrates how three types of international growth-based policies (development assistance, foreign direct investment, and international trading systems) do, in general, more harm than good if examined from an economic and social human rights perspective.[31] By reversing the question, some economists have supported the idea that securing human rights hinders economic growth.[32] This heavily contested finding, also called the 'Lee thesis', is supported by various studies using data from China.[33] However, these authors mainly focus on civil and political human rights just as the vast majority of writings in that field, leaving the relationship between growth and ESC rights to be refined. In any case, economic growth is, here too, also unquestionably postulated as a desirable objective.

3. THE RELATIONSHIP BETWEEN GROWTH AND ESC RIGHTS WITHIN THE ICESCR SYSTEM

The text of the ICESCR is silent on economic growth as such. Two facets of the right to work provided by Article 6 of the Covenant are nonetheless of particular interest with respect to the growth paradigm. The second paragraph of Article 6 states that the steps to be taken by State Parties to fully realise the right to work should include policies and techniques to achieve (i) 'steady economic [...] development' as well as (ii) 'full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual'. This means that economic development, which includes (but is not limited to) economic growth, was assumed at the time of the adoption of the Covenant to be a driver of the realisation of the right to work. It is also clear, however, that 'work' is mainly understood as 'productive work', the latter having been described by several authors as a central feature of the growth paradigm.[34]

Furthermore, Article 16 of the Covenant provides that States Parties have to submit reports on the 'measures adopted and the progress made in achieving the observance of the rights recognized herein'. Those reports have to include 'accurate information on the standard of living of the different segments of the population', with relevant indicators such as per capita income, GDP and growth rates as relevant indicators. Furthermore, budgetary allocations and trends should be

30. Koob, Jorgensen and Sano (n 20), 7. Emphasis added.
31. Ilias Bantekas, 'Wealth and Growth-Based Policies Augment Global Poverty and Erode Human Rights: A Return to Human-Centered Thinking' (2012) 1 International Human Rights Law Review 30.
32. Carl Henrik Knutsen, 'Investigating the Lee Thesis: How Bad Is Democracy for Asian Economies?' (2010) 2 European Political Science Review 451.
33. Blume and Voigt (n 21); Beth A Simmons and Anton Strezhnev, 'Human Rights and Human Welfare: Looking for a "Dark Side" to International Human Rights Law' in Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press 2017).
34. Elise Dermine and Daniel Dumont, 'Le Droit Social et Le Productivisme. Droit de La Croissance Ou Droit de l'autonomie? Une Cartographie Du Rapport de Force' in Antoine Bailleux (ed), *Le droit en transition. Les clés juridiques d'une prospérité sans croissance* (Publications de l'USLB 2020).

included and expressed in percentages of GDP.[35] Therefore, the only conclusion that may be drawn from the Treaty is that economic growth is somehow relevant as it has to be indicated by the State in its report on the one hand, and that it might be a means among others to achieve the right to productive work, on the other hand.

Does the Committee's case law provide further information on how precisely economic growth is relevant for ICESCR rights? To answer this question, the Committee's position on economic growth is derived from the systematic consultation of all the Views, Concluding Observations, General Comments and Statements adopted by the Committee containing the keywords '(economic) growth', 'economic development', 'Gross Domestic Product' (or GDP), 'Gross National Product' (or GNP), 'Gross National Income' (or GNI), or 'recession'.[36] This represents over a 100 documents – comprised predominantly of Concluding Observations – which are grouped and referred to in the paragraphs composing this section.[37]

Although the Views adopted under the optional protocol to the ICESCR – limited in number – are silent on this matter, Concluding Observations, General Comments and Statements offer enough investigative material to unveil the relationship between the rights of the Covenant and economic growth. The Committee consistently takes for granted the fact that economic growth is a useful means for the realisation of ESC rights (Section 3.1). This implies that an economic recession is taken into account by the Committee as a legitimate factor and difficulty affecting the degree of fulfilment of ESC rights (Section 3.2). Although in certain cases the Committee seems to promote economic growth per se for less affluent countries (Section 3.3), the key narrative is that economic growth should be inclusive (Section 3.4). Economic growth is therefore understood as a *useful* vehicle for the realisation of ESC rights, or even a *necessary* one for less affluent countries. It is never applauded as a *sufficient* condition.

3.1 The Principle: Economic Growth is a means to Progress in the realisation of ESC rights

The central assumption of the Committee's case law is that economic growth is a means to achieve progress in the enjoyment of ESC rights in that it enables the creation of a conducive environment for their realisation. In various Concluding Observations, the Committee considered that economic growth may help in combatting unemployment,[38] food insecurity,[39] lack of social security,[40] inequalities[41] and poverty in general.[42] In its 1990 Concluding Observations concerning Korea,

35. Report of the Secretary-General, Compilation of guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties, HRI/GEN/2/Rev.6 (3 June 2009). See also Economic and Social Council resolution, Revised General Guidelines Regarding the Form and Contents of Reports to Be Submitted by States Parties Under Articles 16 and 17 of the ICESCR, E/C.12/1991/1 (17 June 1991).
36. Although GDP, GNP and GNI are distinct and may have strategic implications (Brian Czech, *Supply Shock: Economic Growth at the Crossroads and the Steady State Solution* (New Society Publishers 2013)), we treated them indiscriminately.
37. For the sake of brevity and clarity, some Concluding Observations that were overabundant in substance were not systematically referenced.
38. CO, India, E/C.12/IND/CO/5 (2008) para 20.
39. CO, India, E/C.12/IND/CO/5 (2008) para 28. See also CO, El Salvador, E/C.12/1/Add.4 (1996) para 12.
40. CO, Canada, E/C.12/CAN/CO/5 (2006) para 20.
41. CO, Tajikistan, E/2007/22 (2007) para 45. See also CO, Panama E/C.12/1995/8 (1995) para 2.
42. CO, Republic of Korea, E/1995/3/Add.19 (1995) para 9.

for example, the Committee applauded the constant, significant and rapid economic growth of the past thirty years as 'the considerable material progress achieved should lay the foundation for the enhanced enjoyment of economic, social and cultural rights'.[43]

The underlying mechanism is that economic growth provides greater capacity – that is, greater resources or 'fruits'[44] – to States Parties. In that sense, having an appropriate tax rate seems to constitute a precondition to increase States' resources when there is economic growth: in its Concluding Observations on the 2019 Ecuadorian report, the Committee noted with concern that 'tax receipts, as a proportion of gross domestic product, are lower than in countries with a similar level of development'.[45] This general principle has three partially overlapping corollaries.

1. A stagnation or a worsening of the ESC rights situation in a State experiencing economic growth is regarded as either not acceptable, or as a regrettable missed opportunity. For instance, in its 1996 Concluding Observations concerning El Salvador, the Committee emphasised that 'the continued existence of such a level of poverty in a country experiencing constant economic growth is unjustifiable'.[46] The Committee, furthermore, regularly notes with concern 'high levels of poverty [. . .] despite the fact that the State party has a high national income'.[47] This does not apply to poverty only: in its 2006 Concluding Observations related to Canada for instance, the Committee was concerned that the State had not increased its support for post-secondary education, social assistance and social services compared to former levels 'in spite of the sustained economic growth in the State party during these last years'.[48] Similar concerns were voiced with respect to employment rates,[49] social systems,[50] higher standards of living,[51] social disparities and inequalities,[52] food security,[53] infant mortality[54] or, very recently, health.[55] Sometimes the terms 'despite the State party's economic prosperity'[56], 'despite the level of its economic development'[57] or 'despite high rate of economic growth'[58] are used to express the same idea. This corollary may

43. CO, Republic of Korea, E/1995/3/Add.19 (1995) para 3.
44. The word is used in the Concluding Observations on the 2008 Bolivian report: "the fruits of the State party's current macroeconomic growth" (CO, Bolivia (Plurinational State of), E/C.12/BOL/CO/2 (2008) para 30).
45. CO, Ecuador, E/C.12/ECU/CO/4 (2019) para 21.
46. CO, El Salvador, E/C.12/1/Add.4 (1996) para 12.
47. CO, Equatorial Guinea, E/C.12/GNQ/CO/1 (2012) para 16. See also CO, Cambodia E/C.12/KHM/CO/1 (2009) para 27; India, E/C.12/IND/CO/5 (2008) para 28; Congo E/C.12/COG/CO/1 (2013) para 19.
48. CO, Canada, E/C.12/CAN/CO/5 (2006) para 20.
49. CO, Bolivia (Plurinational State of), E/C.12/BOL/CO/2 (2008) para 30. See also CO, India E/C.12/IND/CO/5 (2008) para 20.
50. CO, Netherlands E/C.12/1/Add.25 (1998) para 10: 'despite economic growth the State has reduced services harming lowest income groups'.
51. CO, Congo, E/C.12/COG/CO/1 (2013) para 19.
52. CO, Congo, E/C.12/COG/CO/1 (2013) para 19.
53. CO, India, E/C.12/IND/CO/5 (2008) para 28.
54. CO, India, E/C.12/IND/CO/5 (2008) para 33.
55. CO, Guinea, E/C.12/GIN/CO/1 (2020) para 12.
56. CO, Australia, E/C.12.AUS/CO/4 (2009) para 24.
57. CO, United Kingdom of Great Britain and Northern Ireland (Crown Dependencies), E/C.12/GBR/CO/5 (2009) para 28. See also CO, Switzerland, E/C.12/1/Add.30 (1998) para 12; Japan, E/C.12/1/Add.67 (2001) para 3; China, E/C.12/1/Add.107 (2005) para 30.
58. CO, Benin, E/C.12/1/Add.78 (2002) para 10. See also CO, Rwanda, E/C.12/RWA/CO/2-4 (2013) para 22; Ethiopia, E/C.12/ETH/CO/1-3 (2012) para 9; Paraguay, E/C.12/PRY/CO/3 (2008) para 12(a).

also be found under a general formulation in the 2009 Concluding Observations concerning the Korean report, in which the Committee clearly stated its concern regarding the fact that

> the rapid pace of economic growth — of unprecedented proportions in Asia — that has turned the country into the twelfth-largest economy has not been matched by greater fulfilment of economic, social and cultural rights, in particular for the most disadvantaged and marginalized individuals and groups.[59]

2. As it increases States' capacities, economic growth implies that greater financial means should be devoted to the realisation of ESC Rights. For instance, the Committee systematically refers to the UN official development assistance (ODA) standard[60] which requires States to 'increase the level of official development assistance in order to meet the target for high-income countries to provide 0.7 per cent of gross national income'.[61] The same is true for public spending on domestic social policies: the Committee stated in its Concluding Observations on the 2019 Kazakh report that it was concerned with the 'overall low level of public expenditure on social services as a ratio of the gross domestic product',[62] implying that GDP growth should lead to an increase in public expenditure on social services. This element has been repeated regularly, although sometimes using different terms.[63] The Committee also criticised that 'in spite of a high GDP growth rate, the national spending on social services such as housing, health and education remains low, and has in fact decreased over the years'.[64] In the same vein, the Committee does not hesitate to qualify the social expenditure of a country on health care, education, water and electricity supplies as 'inadequate' when the State is witnessing rapid economic growth.[65]

More generally, economic growth increases the burden on States' shoulders. The Committee considers that during a period of strong economic growth and increased affluence, a State Party should adopt stronger policies to protect the most vulnerable and alleviate poverty.[66] In fact, the very process of referring to percentages of GDP, GNP or GNI as an explicit or implicit compliance indicator in times of economic growth implies that the monetary amount – in absolute terms – that a State should allocate to ESC rights increases. This implication consistently stems from the States' obligation to devote the 'maximum of their available resources' to the progressive realisation of ESC rights under Article 2 of the Covenant.

3. Economic growth does not necessarily suffice to improve the realisation of ESC rights. It remains a means and not an end per se. In its General Comment No. 20 on non-discrimination in ESC rights, the Committee underlined that 'economic growth has not, in itself, led to sustainable

59. CO, Republic of Korea, E/C.12/KOR/CO/3 (2009) para 22.
60. See also para 31 of the Limburg Principles on the Implementation of the ICESCR, which were endorsed by the Committee as interpreting accurately the Covenant and according to which States should 'co-operate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences'.
61. For recent Concluding Observations stressing that point, see CO, Slovakia, E/C.12/SVK/CO/3 (2019), para 11; Denmark, E/C.12/DNK/CO/6 (2019) para 14.
62. CO, Kazakhstan, E/C.12/KAZ/CO/2 (2019) para 19.
63. Democratic Republic of the Congo, E/C.12/COD/CO/4 (2009) para 16; Zambia E/C.12/1/Add.106 (2005) para 52; China, E/C.12/1/Add.107 (2005) para 40; Algeria, E/C.12/1/Add.71 (2001) para 23. See also CO, India, E/C.12/IND/CO/5 (2008) para 33.
64. CO, Philippines, E/C.12/PHL/CO/4 (2008) para 17.
65. CO, Republic of Korea, E/C.12/KOR/CO/3 (2009) para 22.
66. CO, Canada, E/C.12/1/Add.31 (1998) para 34.

development, and individuals and groups of individuals continue to face socio economic inequality [. . .]'.[67] The same idea may be found in the General Comment No. 23 on the right to just and favourable conditions of work, in which the Committee writes that '*even in times of economic growth*, many workers do not enjoy such conditions of work'.[68] Similarly, in the above-mentioned Concluding Observations regarding the 1995 Korean report, where the Committee had welcomed 30 years of economic growth, it noted with concern 'the fact that efforts and achievements in securing outstanding and rapid economic growth have not always been matched by an appropriate level of protection of economic, social and cultural rights'.[69] On one occasion, the Committee went a step further and stressed the potential dangers of pursuing economic growth at all costs. In its 2001 Concluding Observations concerning Korea, the Committee criticised the fact that 'some rights or the rights of some groups are being sacrificed for the sake of economic recovery and market competitiveness'.[70]

3.2 Mirroring the principle: An economic recession is a factor impeding the realisation of ESC rights

As a logical consequence of the principle described above, it is the Committee's opinion that an economic recession or a lower growth rate – especially if combined with social tension and political instability – may be a legitimate 'factor and difficulty affecting the degree of fulfilment' of the obligations deriving from the Covenant that may be put forth in States' reports under Article 17 of the Covenant.[71] The Committee very clearly acknowledged that a recession or slow growth may impede the further realisation of ESC rights[72] or affect their enjoyment.[73] In its 1999 Concluding Observations concerning Tunisia for instance, it regretted that the State Party did not detail the 'external factors' at the origin of the difficulties impeding the implementation of the Covenant, such as 'high unemployment, the slowing economic growth in recent years or social or political tensions'.[74] Similarly, in its Concluding Observations on the 2001 Colombian report, the Committee stated that

> the economic recession along with certain aspects of the structural adjustment programs and economic liberalization policies [. . .] have aggravated the negative effects on the enjoyment of economic, social, and cultural rights by the population, in particular the most disadvantaged and marginalized groups.[75]

67. CESCR, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20 (2 July 2009) para 1.
68. CESCR, General Comment No. 23: the right to just and favorable conditions of work, E/C.12/GC/23 (27 April 2016) para 3. Emphasis added.
69. CO, Republic of Korea, E/1995/3/Add.19 (1995) para 3.
70. CO, Republic of Korea, E/C.12/1/Add.59 (2001) para 13.
71. According to Article 17 of the ICESCR, '1. The States Parties [. . .] shall furnish their reports in stages [. . .]. 2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant'.
72. CO, Solomon Islands, E/C.12/1/Add.84 (2002) para 5.
73. CO, Nepal, E/C.12/1/Add.66 (2001) para 11.
74. CO, Tunisia, E/C.12/1/Add.36 (1999) para 9.
75. CO, Colombia, E/C.12/1/Add.74 (2001) para 9.

As an economic recession may legitimately explain a worsening of the situation of ESC rights in a country, the Committee particularly welcomes reports demonstrating that States continue to take actions for the realisation of rights domestically and abroad in times of economic difficulties. In the 1994 Concluding Observations concerning Uruguay, the Committee noted 'with satisfaction' that the State had adopted measures 'aimed at offsetting the adverse consequences for the enjoyment of economic, social and cultural rights of the economic recession [. . .]'.[76] In the same vein, in its 1996 Concluding Observations concerning Finland, the Committee considered as a positive aspect the fact that 'despite the difficulties due to the economic recession, Finland contribute(d), although at a reduced level, to programmes of international cooperation thus potentially promoting the realisation of economic, social and cultural rights in other countries'.[77]

More than a mere positive aspect that may underlie Concluding Observations, paying specific attention to the ESC rights of vulnerable members of society in times of economic hardship is an *obligation* arising from the ICESCR as it is interpreted by the Committee in its General Comments. In the General Comment No. 3 on the nature of States Parties' obligations, the Committee indicated that

> even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low cost targeted programmes.[78]

The General Comment No. 5 on persons with disabilities confirms this: 'the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints'.[79] This injunction was repeated, albeit in a softer formulation, in General Comment No. 6 concerning the ESC rights of older persons[80] and in General Comment No. 12 concerning the right to adequate food.[81]

In other words, if an economic recession certainly constitutes a lacking string to a State's bow, it does not provide a blank check. In that sense, the CESCR Chairperson's letter written in 2012 in response to the austerity programmes enacted by States Parties due to the sovereign debt crisis acknowledges that 'economic and financial crises and a lack of growth can lead to retrogression in the enjoyment of rights' and that adjustments in the implementation of the Covenant during that period are 'inevitable'. Nonetheless, the Chairperson underlined the necessity 'to avoid at all times taking decisions which might lead to the denial or infringement of ESC rights, especially those of the most vulnerable, marginalized and disadvantaged'.[82]

76. CO, Uruguay, E/C.12/1994/3 (1994) para 3. See also CO, Israel, E/C.12/1/Add.90 (2003) para 5.
77. CO, Finland, E/C.12/1/Add.8 (1996) para 8.
78. CESCR, General Comment No. 3 on the nature of States parties obligations, E/1991/23 (14 December 1990) para 12.
79. CESCR, General Comment No. 5 on persons with disabilities, E/1995/22. (9 December 1994) para 10.
80. CESCR, General Comment No. 6 on the ESC rights of older persons E/1996/22 (24 November 1995) para 17.
81. CESCR, General Comment No. 12 on the right to adequate food, E/C.12/1999/5 (12 May 1999) para 28.
82. Arranga G. Pillay, Chairperson of the CESCR, *Letter to all State Parties*, CESCR/48th/SP/MAB/SW (16 May 2012).

3.3 The inversion of the principle: economic growth as an end in itself for materially deprived countries

In contrast to what has been discussed above, the Committee did consider in a limited number of Concluding Observations that economic growth should be pursued without explicitly stating its relevance for the rights set forth in the Covenant. Overturning the idea according to which economic growth is a tool, the Committee praised it as an end in itself in cases concerning countries facing so much material deprivation that the realisation of ESC rights is particularly weak.

In the 2002 Concluding Observations concerning Georgia for instance, the Committee welcomed 'that the general tendency of a weak economic growth has been reversed in the period 2000-2002: GDP has increased from 6 billion GELS in 2000 to 6.6 billion GELS in 2001'.[83] Similarly, in its Concluding Observations on the 2001 Senegal report, the Committee viewed as a 'positive development' the growth of the State Party's GDP 'at a rate of about 5.3 per cent per annum since the devaluation of the CFA franc in 1994'.[84] Among the positive aspects of the 2000 Kirghiz report, the Committee appreciated that there were 'good prospects for growth of GDP in 2000'.[85] Likewise, in its General Comment No. 18 on the right to work, the Committee did exactly the same when stating that

> the right to work requires formulation and implementation by States parties of an employment policy with a view to 'stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment' (See ILO Convention No. 122 concerning Employ Policy, 1964, article 1, paragraph). [86]

In one isolated instance, the Committee inserted a utilitarian argument in its reasoning on the importance of investing in education, affirming that developing ESC rights is a means to foster economic growth. In its Concluding Observations on the 2011 Cameroonian report and because of the worrying dropout rate in the education system, the Committee urged 'the State party to expand access to higher education in order to provide the labor market with the skills essential to the country's growth'.[87]

The fact that this inverted principle only holds for less affluent countries has been made even clearer by the Committee in its Concluding Observations concerning the 1996 Guinean report where the Committee considered that the GDP per capita was 'inadequate' as the living conditions of Guineans were 'extremely difficult' and that Guinea was 'among the poorest countries of Africa', recalling that extreme poverty undermines human dignity.[88] It thus appears that the Committee considers that economic growth is not only useful but may also be necessary if the country finds itself below a certain threshold of affluence that remains undefined.

83. CO, Georgia, E/C.12/1/Add.83 (2002) para 5.
84. CO, Senegal, E/C.12/1/Add.62 (2001) para 4.
85. CO, Kyrgyzstan, E/C.12/1/Add.49 (2000) para 3. See also CO, India, E/C.12/IND/CO/5 (2008) para 60: The Committee encourages the State to 'provide the necessary conditions to encourage private sector employers to create additional jobs in the process of economic growth'.
86. CESCR, General Comment No. 18 on the right to work, E/C.12/GC/18 (24 November 2005) para 26.
87. CO, Cameroon, E/C.12/CMR/CO/2-3 (2011) para 32.
88. CO, Guinea, E/C.12/1/Add.5 (1996) para 8.

3.4 How economic growth improves the realisation of ESC rights: the inclusive growth model

The above has shown that in the Committee's view, economic growth can be a means to achieving the progressive realisation of ICESCR rights as it allegedly increases the States' capacity to do so. In some cases, the Committee has promoted economic growth without explicitly stating further ends. In the first part of this Section, it has also been demonstrated that the underlying assumption is that economic growth builds State capacity through taxation and that it allows public spending. This section is now continued by arguing that the Committee's positions go further in outlining the growth model it wishes to promote: the prerequisite under which economic growth may lead to a greater realisation of ESC rights is that it should be *inclusive*.

This requirement results from the fact that the impact of economic growth for ESC rights of the population – and especially its poorest segments – fundamentally depends on the distribution of its gains. The Committee enjoins States to 'ensure an equitable distribution of the benefits of the economic growth and improve the standard of living of the most vulnerable groups of the population'.[89] Similarly, in its Concluding Observation regarding the 1995 Panamanian report, the Committee welcomed high annual growth rate but condemned the lack of redistribution of its outcomes:

> the distribution of its benefits did not make it possible to eliminate or, in most cases, even to remedy existing deep-rooted structural inequalities which are reflected mainly in the level and distribution of income, as well as in differentiated access to public services.[90]

Quite recently, the Committee was even more straightforward by expressing concerns in 2018 about South Africa's poor Gini coefficient, and by stressing that the State 'is among the most unequal countries in the world', therefore concluding that it should 're-examine its growth model in order to move towards a more inclusive development pathway'.[91] Similarly, in its General Comment No. 20 on non-discrimination in economic, social and cultural rights, the Committee argued that 'economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination'.[92] The key insight here is that the larger picture put forth by the Committee ties the positive character of economic growth to a sufficiently redistributive model.

4. RECONSIDERING ECONOMIC GROWTH FROM A HUMAN RIGHTS PERSPECTIVE: A CRITICAL DISCUSSION

This critical discussion analyses the Committee's position regarding the economic growth paradigm on the basis of the previous section (Section 4.1). This is followed by explaining why the increasing integration of sustainability in the Committee's case law should lead to a reconsideration of this position in light of the growing evidence regarding social and environmental

89. CO, Tajikistan, E/2007/22 (2007) para 445.
90. CO, Panama, E/C.12/1995/8 (1995) para 2. See also CO, India, E/C.12/IND/CO/5 (2008) para 60; United Kingdom of Great Britain and Norther Ireland, E/C.12/1/Add.19, (1997) para 9.
91. CO, South Africa, E/C.12/ZAF/CO/1 (2018) para 17.
92. CESCR, General Comment No. 20 on non-discrimination in ESC rights, E/C.12/GC/20 (2 July 2009) para 38.

externalities of economic growth (Section 4.2). It finally humbly offers some insights into how the realisation of ESC rights might still be enhanced in a post-growth paradigm (Section 4.3).

4.1 The committee's acceptation and promotion of the status quo

Although at first sight, one might have imagined that the human rights field would be silent on economic growth, the previous Section has proven otherwise. In the mutually exclusive *versus* mutually beneficial debate set out in Section 2, the Committee seems to support the second position. The Committee is not, however, a cenacle made of political economists as its members are mainly legal scholars, diplomats or political scientists.[93] It does not, therefore, express the economic foundations of its findings. Its understanding of economic prosperity merely echoes the deeply anchored orthodox economic views and the literature summarised above, without questioning it. The Committee refrains from entering complex economic debates where it would not hold a sufficient legitimacy. Therefore, it accepts the status quo and chooses to promote ESC rights in a framework that remains unchallenged. By refraining from evoking critiques of economic growth nor its costs, the Committee implicitly endorses and supports the growth paradigm.

To a certain extent, this is fully understandable. The ICESCR system is embedded in the commonly approved assumptions at the time of its elaboration, which was an

> era during which social protection, economic growth and trade liberalisation were seen as mutually supportive: a virtuous cycle was established, in which trade contributed to growth and employment, which in turn could finance social protection and protect all those who were deprived from the opportunity to have access to gainful employment either temporarily or permanently,

to use De Schutter's words.[94] This period, known as the Fordist years, was organised as a class compromise between capital and labour. The latter sought to ensure that the gains derived from an increase in productivity and economic growth would be partly redistributed, hence opening the way for mass consumption.[95] The Covenant's system therefore still echoes the then prevailing belief according to which economic growth is a necessary precondition of social progress. As of today, the greater realisation of ESC rights or, more generally, the functioning of Welfare States seems to remain 'growth-dependent areas'[96] which is reflected in the wording of Article 2 of the Covenant requiring that each State takes steps 'to the maximum of its available resources'.[97] The link between economic growth and employment, for instance, has been described as being 'deeply ingrained in the social imaginary as a relation of necessity: growth is indispensable to create

93. On 21 July 2020, however, one sitting expert held a Ph.D. in political economy. The members' curricula vitae are available at Committee on Social and Economic Rights, 'Membership' (*Committee on Social and Economic Rights*) <www.ohchr.org/EN/HRBodies/CESCR/Pages/Membership.aspx> accessed 21 July 2020.
94. Olivier De Schutter, 'Welfare State Reform and Social Rights' (2015) 33 Netherlands Quarterly of Human Rights 123, 123-124.
95. Robert Boyer, 'Du fordisme canonique à une variété de modes de développement' in Robert Boyer and Yves Saillard (eds), *Théorie de la régulation, l'état des savoirs* (La Découverte 2002) 370-371.
96. Ulrich Petschow, Eugen Pissarskoi and Nils aus dem Moore, 'Social Well-Being within Planetary Boundaries: The Precautionary Post-Growth Approach' (2020) 234/2020 Federal Environment Agency.
97. On this point, see Olivier De Schutter, 'The Rights-Based Welfare State. Public Budgets and Economic and Social Rights' (2018) FES Geneva Study, 7.

jobs'.[98] Even if this assumption has been criticised both theoretically and empirically,[99] it persists as a core assumption shared among economists.[100]

4.2 The committee's ecological turn and the ESC rights-related consequences of climate change

Although the pragmatic approach of the Committee regarding economic growth derives from a deeply rooted paradigm, this loyal stance should be reconsidered in light of the Committee's expanding concerns relating to the consequences of ecological threats on ESC rights.

Recently, the Committee issued a Statement on 'Climate change and the International Covenant on Economic, Social and Cultural Rights' in which it acknowledged that the latest report of the Intergovernmental Panel on Climate Change ('IPCC') demonstrates that climate change represents a massive danger for the enjoyment of ESC rights.[101] It further indicates that the failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilise the maximum available resources in an effort to do so, could constitute a breach of States' obligation with regard to the Covenant.[102] The bulk of these principles have been reaffirmed in a joint Statement adopted by the Committee and four other international human rights treaty bodies.[103] These documents are the result of a genuine ecological shift: The Committee mentioned climate change-related issues in 10.8% of its Concluding Observations between 2008 and 2019.[104] It henceforth keeps 'under review the impacts of climate change on economic, social and cultural rights', and provides States with 'guidance' as to how they can mitigate and adapt to climate change.[105]

However commendable, this ecological turn nonetheless operates within the growth paradigm. In its Statement on 'the green economy in the context of sustainable development and poverty eradication', the Committee emphasised the need to 'integrate the green economy into the broader concept of sustainable development, which encompasses social development, together with economic growth and environmental protection, and thus has close linkages with economic, social and

98. Parrique (n 1), 139.
99. See Parrique (n 1) 42, referencing numerous studies from Hollmes and Silverstone, Cuaresma, Harris and Silverston, Meyer and Tasci, Cazes et al., Bell et al., Huang and Lin, Knotek, Sögner and Stiassny, Weber, Khemraj et al. and Gordon.
100. Linda A Bell and Richard B Freeman, 'The Incentive for Working Hard: Explaining Hours Worked Differences in the U.S. and Germany' (2001) 8 Labour Economics 181.
101. CESCR Statement, Climate change and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2018/1 (31 October 2018) para 4.
102. ibid. para 6.
103. Joint Statement on 'Human Rights and Climate Change', (*Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities Statement,* 16 September 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E> accessed 26 January 2020.
104. CIEL and The Global Initiative for Economic, Social and Cultural Rights, 'Economic, Social, and Cultural Rights Obligations of States in the Context of Climate Change. Synthesis of Statements on Climate Change by the Committee on Economic, Social and Cultural Rights (2020 Update)' (2020) 2-3.
105. CESCR Statement, Climate change and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2018/1 (31 October 2018) para 11.

cultural rights'.[106] In line with existing models developed within the OECD's green growth initiative, the EU's Green Deal strategy or the ILO's green economy notion, the Committee envisions sustainability hand in hand with economic growth. In that respect, it is fully aligned with the UN Sustainable Development 2030 Agenda, part of its goals No. 8 being to promote a 'sustained, inclusive and sustainable economic growth'.[107]

This ecological turn of the Committee – to which its growing concern for inequalities may be added[108] – should lead it to deeply question the credibility of a model combining the realisation of ESC rights, economic growth and environmental soundness. Once a certain threshold of affluence is reached, an 'environmentally friendly economic growth'[109] model may not suffice for two main reasons.

The first reason is social: economic growth – that is, an increase in GDP – does not necessarily translate into greater well-being for mankind, whether objectively or subjectively measured. This intuition owes much to the debated 'Easterlin paradox', according to which GDP is correlated to subjective well-being from a static perspective, but *growth* of the former is not linked to an improvement of the latter once a certain threshold is reached.[110] Moreover, several critiques have stressed the fact that GDP growth is absolutely silent on distributional evolutions. For instance, Piketty *et al.* have shown that the per capita income of the lower half of the income distribution in the US remains at the same level today as it was in 1980, while the income of richer classes has skyrocketed during that (economically growing) period.[111] More broadly, growth-enhancing policies such as reducing fiscal burdens, trade barriers or social standards in a global race to the bottom have been pointed at for their negative impacts on social and economic human rights.[112]

The second reason is ecological and has been put forth as early as 1972 by the world-famous 'Limits to Growth' report by the Club of Rome.[113] This environmental critique, which has by now been refined and amplified,[114] can be summarised very simply: GDP growth increases

106. CESCR, Statement in the context of the Rio+20 Conference on "the green economy in the context of sustainable development and poverty eradication", E/C.12/2012/1 (18 May 2012) para 3.
107. General Assembly resolution, Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1 (21 October 2015). According to some authors, this inclusion is a contradiction of the UN strategy considering that the never-ending pursuit of growth is incompatible with the environmental goals (Goals 6, 12, 13, 14, and 15). See e.g. Mary Menton and others, 'Environmental Justice and the SDGs: From Synergies to Gaps and Contradictions' (2020) 15 Sustainability Science 1621.
108. Ragnarsson (n 12).
109. Giorgos Kallis, Christian Kerschner and Joan Martinez-Alier, 'The Economics of Degrowth' (2012) 84 Ecological Economics 172, 172.
110. Richard Easterlin, 'Does Economic Growth Improve the Human Lot? Some Empirical Evidence' in Paul A. David and Melvin W. Reder (eds), *Nations and Households in Economic Growth* (Academic Press 1974). Fanning and O'Neill show, however, that a declining GDP leads to a decline in subjective well-being: Andrew Fanning and Dan O'Neill, 'The Wellbeing–Consumption Paradox: Happiness, Health, Income, and Carbon Emissions in Growing versus Non-Growing Economies' (2019) 212 Journal of Cleaner Production 810.
111. Facundo Alvaredo and others, 'World Inequality Report' (World Inequality Lab 2018).
112. See, for instance, Bantekas (n 31).
113. Donella H. Meadows and others, *The Limits to Growth. A Report for the Club of Rome's Project on the Predicament of Mankind* (Universe Books 1972). From the same period, see also James Tobin and William D Nordhaus, 'Is Growth Obsolete?' in Milton Moss (ed), *The Measurement of Economic and Social Performance* (NBER 1973) or Nicolas Georgescu-Roegen, *The Entropy Law and the Economic Process* (Harvard University Press 1971).
114. See e.g. Tim Jackson and Robin Webster, 'Limits Revisited, a Review of the Limits to Growth Debate' (2016) CUSP, Report to the All-Party Parliamentary Group on Limits to Growth; Herman E. Daly, *Beyond Growth: The Economics of Sustainable Development* (Beacon Press 1997).

environmental pressure while the biocapacity of the planetary system has been largely overstepped. Consequently, genuine sustainability implies a society where individual well-being is not dependent upon greater material affluence and where collective prosperity is disconnected from GDP. Recent expanding evidence on the quasi-impossibility to achieve an absolute decoupling of economic growth from ecological pressure further reinforces these concerns.[115] If, admittedly, localised examples of absolute decoupling have been observed in affluent countries with respect to greenhouse gases emissions, for instance, the speed at which it has occurred is highly insufficient if 1,5°C and 2°C Paris Agreement targets are to be met while ensuring continuous economic growth.[116]

4.3 ESC rights without growth?

The thorny question then is how to combine calls for the greater realisation of ESC rights with a critical view on economic growth? Admittedly, developing a fully articulated political economy of a post-growth paradigm raises many issues and rests on controversial assumptions which evidently fall outside the ambit of both the Committee's work and this article. In particular, the consequences of a post-growth concept applied to countries where extreme poverty is raging are fiercely debated,[117] while avoiding the disastrous consequences of an economic recession also is of utmost importance.[118] Yet, it is the authors' stance that the Committee possesses some latitude to open up alternative pathways beyond economic growth's 'mystique'.[119] Below, two ways in which it could allow the emergence of new imaginaries beyond growth and help escape from the dependency of ESC rights' on growth are highlighted.

First, the Treaty body could acknowledge in Concluding Observations, General Comments, Views or Statements that the correlation between economic growth and ESC rights is – to say the least – 'less causal than is commonly assumed'.[120] This might take the form of an explicit statement of some of the above-mentioned social limits to growth. Alternatively, this might be done by stressing the links between an economic model relying on infinite growth and ecological harms, themselves having severe impacts on ESC rights. The Committee would then refrain from systematically assuming that economic growth could only be *positive* at best, or *neutral* at worst, for ESC rights and recognise that with an ever-increasing GDP may come at damaging social and environmental costs. When doing so, the CESCR could distinctively modulate its stance on

115. Tere Vadén and others, 'Decoupling for Ecological Sustainability: A Categorisation and Review of Research Literature' (2020) 112 Environmental Science & Policy 236.
116. Jason Hickel and Giorgos Kallis, 'Is Green Growth Possible?' (2020) 25 New Political Economy 469; Helmut Haberl and others, 'A Systematic Review of the Evidence on Decoupling of GDP, Resource Use and GHG Emissions, Part II: Synthesizing the Insights' (2020) 15 Environmental Research Letters 065003. See also United Nations Development Programme, *Human Development Report 2020. The next frontier. Human development and the Anthropocene* (UNDP 2020).
117. Beatriz Rodríguez-Labajos and others, 'Not So Natural an Alliance? Degrowth and Environmental Justice Movements in the Global South' (2019) 157 Ecological Economics 175.
118. After having systematically reviewed 128 peer-reviewed articles focused on degrowth, Cosme, Santos and O'Neill indicate that 'degrowth is not a synonym for negative growth (economic recession) and it is not a goal in itself" (Ines Cosme, Rui Santos and Daniel O'Neill, 'Assessing the Degrowth Discourse: A Review and Analysis of Academic Degrowth Policy Proposals' (2017) 149 Journal of Cleaner Production 321).
119. Dominique Méda, *La Mystique de La Croissance. Comment s'en Libérer?* (Flammarion 2013).
120. Parrique (n 1), 157.

economic growth depending on the evaluated country's material affluence and apply a form of 'threshold hypothesis'[121] according to which the costs of economic expansion may progressively outweigh its benefits once a certain GDP-related threshold is reached. It would thereby acknowledge a distinction between two different situations. On the one hand, below a certain level of affluence, economic growth – as long as its fruits are well redistributed – is useful to ensure the realisation of ESC rights. On the other hand, beyond a certain threshold, the Committee should stress that a perpetual growth leads to negative social and ecological externalities that could alter the enjoyment of ESC rights.

Second, the Committee could endorse the insights developed by various scholars to further realise ESC rights without economic growth. Following De Schutter, the authors believe that the historical assumption according to which social progress could only be realised if the State's available resources increase should not be deemed to be cast in stone.[122] To briefly take an example, combatting poverty – a 'denial of human rights'[123] *par excellence* – does not necessarily require greater aggregate means. According to Philip Alston, the realisation of ESC rights in affluent countries hinges less on a lack of financial capacity than on redistribution issues.[124] In a period where human rights are being heavily criticised for their historical complacency towards gross inequalities,[125] the Committee should pursue its recent endeavour to tackle growing inequalities and further address their structural roots.[126] In its case law, the Committee could endorse the view that in many cases, poverty alleviation requires a focus on equality rather than on economic growth. This would only logically echo the 'leaving no one behind' principle lying at the core of the previously mentioned 2030 Agenda. Insisting on the multidimensional aspects of poverty beyond a materialistic approach is also another pathway to conceive a post-growth paradigm.[127]

5. CONCLUSION

This article sought to explore, from a formalistic legal perspective, the role of economic growth in the enjoyment of ESC rights, taking the ICESCR and the CESCR's case law – understood in a broad sense – as empirical material. It showed that in the Committee's view, economic growth is a means to achieving greater realisation of ESC rights. From this perspective, growth increases States' capacities and leads to the creation of jobs. However, this only happens if the fruits of economic growth are inclusively redistributed. In some limited cases, the Committee does welcome economic growth without referring to further ends. The economic, social and cultural costs of economic growth are never mentioned.

121. Manfred Max-Neef, 'Economic Growth and Quality of Life: A Threshold Hypothesis' (1995) 15 Ecological Economics 115.
122. De Schutter (n 97) 8.
123. James Gustave Speth, 'Poverty: A Denial of Human Rights' (1998) 52 Journal of International Affairs 277.
124. Philip Alston, 'Extreme Inequality as the Antithesis of Human Rights' (2015) Open Global Rights. See also Bantekas (n 31) 43.
125. Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press 2018).
126. A recent study shows that in the past few years, the Committee has raised growing concerns about economic inequality while leaving deeper structures untouched. See Ragnarsson (n 12).
127. Rachel Bray and others, 'The Hidden Dimensions of Poverty' (2019) International Movement ATD Fourth World - Oxford University. Deepa Narayan and others, *Can Anyone Hear Us?: Voices of the Poor* (Oxford University Press 2000).

On this basis, this article argued that the Committee walks an ambiguous tightrope on which it can no longer stand.[128] Its increased concern for the consequences of climate change on ESC rights, on the one hand, and the growing body of evidence on the correlation between environmental pressure and economic activity, on the other, should lead it to reconsider its supportive though nuanced stance on the mainstream growth paradigm, at least when the concerned country has reached a certain level of affluence. The article advanced that the Committee could explore new pathways for the realisation of rights by stressing the costs of economic growth and by embracing a multidimensional approach of poverty and requiring stronger material equality.

In 1930, when imagining 'Economic Possibilities' for his grandchildren, the famous macro-economist John Maynard Keynes envisioned a future in which the 'economic problem' – namely scarcity of resources – 'may be solved'. [129] 'The economic problem', Keynes added, 'is not-if we look into the future-the permanent problem of the human race'.[130] We are Keynes' grandchildren and the least one can say is that the economic problem is far from being solved. Even worse, indicators of an overarching environmental problem are now announcing worrying times. There is therefore an urgent need to question and understand the ESC rights-dependence on economic growth. Far from advocating for an end to human progress, this article has highlighted the opportunity for the Committee to open new understandings of human rights, whose realisation would become independent from economic growth. Following Vandenhole, the authors believe that

> only if human rights law undergoes a paradigmatic shift in the understanding of socio-economic human rights and its role in development, beyond growth assumptions and with a stronger focus on redistribution, it may keep that transformative potential in post-growth or growth agnostic economies.[131]

Authors note

Matthias Petel is also a LLM candidate at Harvard University. Norman Vander Putten is also a Research Fellow at the Belgian National Fund for Scientific Research (FRS – FNRS).

Acknowledgement

The authors warmly thank Professors Antoine Bailleux, Olivier De Schutter and Isabelle Hachez as well as Antoine De Spiegeleir for their valuable advice and comments on previous versions of this article.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

128. Dumont and Dermine also conceive a strongly ambiguous relationship between social rights and the growth paradigm, see Dermine and Dumont (n 34).
129. John Maynard Keynes, 'Economic Possibilities for Our Grandchildren (1930)', *Essays in Persuasion* (Harcourt, Brace and Company 1932).
130. ibid.
131. Wouter Vandenhole 'De-Growth and Sustainable Development: Rethinking Human Rights Law and Poverty Alleviation' 2018 Law and Development Review 1, 5.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Matthias Petel https://orcid.org/0000-0001-7877-0441