



# INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL





*The progressive (timeless) realization.*



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**Abstract**

The woven fabric of this paper is to deal with the issue of the so-called Non-Justiciability of ESCR and the noncompliance of populist regimes to grant them. Furthermore, the paper emphasizes that although various international instruments have dealt with this issue, a clear and universal environmental clause is yet to be established. By examining some cases in the ECtHR, and other National cases, we can gain insight into the past, present, and future of these rights.

This analysis entails a brief explanation of art. 2 of the ICESCR, the provision is fragmented into three sections, which are detailed analyzed and juxtaposed with populist regimes. The maximum of resources, margin of discretion, budget of states, legislation on environment, minimum standards, progressive measures and governments are mainly addressed in this fragmentation of art 2.

Finally, after discussing these ESCR, provisions and desirable outcomes, Mexico case is briefly examined within its ongoing major project concerning the protection of environment and current populist regime.

**List of Acronyms.**

<i>Clean, Healthy and Sustainable Environment Right</i>	<i>CHSER</i>
<i>Climate Change</i>	<i>CC</i>
<i>Committee for Economic, Social and Cultural Rights</i>	<i>CESCR</i>
<i>European Convention of Human Rights</i>	<i>Convention</i>
<i>Economic, Social and Cultural Rights</i>	<i>ESCR</i>
<i>European Court of Human Rights</i>	<i>ECtHR</i>
<i>Green house gases</i>	<i>ghg</i>
<i>United Nations</i>	<i>UN</i>
<i>United Nations General Assembly</i>	<i>UNGA</i>
<i>United Nations General Comment Number 3</i>	<i>UNGCR</i>
<i>International Covenant on Economic, Social and Cultural Rights</i>	<i>ICESCR</i>

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## 1. Introduction

*“When you run up against someone else’s shamelessness, ask yourself: Is a world without shamelessness possible? No, then don’t ask for impossible. There must be shameless people in the world”<sup>1</sup>. Marcus Aurelius.*

This sublime thought from this roman emperor, reminds us that no matter where we find ourselves, as individuals or collectively, immorality will exist. Is upon us the rest of society, who need to take a stand in order to defend, cherish and preserve the bonds that join and unite the whole human race.

The main focus of the present paper will be the relation between populist regimes and their stand before the granting, protection and recognition of the human right to a clean, healthy, and sustainable environment. This was recognized as a human right on 22 July 2022, by the UNGA, this is not a privilege meant for some, but a Universal right<sup>2</sup>. Economic, Social and Cultural rights will also be addressed, due the intrinsic relation between Environment (although is within ESCR), populism and these rights. In this paper, these elements are regarded as a triumvirate, comprising:

- I. ESCR      II. Populist regimes      III. Environment.

The reasons and roots of populism will not be addressed, but the behaviours of this regime that jeopardize the environmental field with the misuse of the provisions within International instruments. Specifically referring to the art. 2 of the ICESCR, which will be analyzed in depth in the present paper. The latter in principle has a noble notion of development realization regarding this right and comprehension of the specific situations that a member state faces. Unfortunately this provision gets corrupted and misinterpreted for ill-benefit (art.2 of the ICESCR). ESCR are of vital importance for the mankind, provides specific rights that are not present in other HR

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<sup>1</sup> Aurelius, Marcus. *The Meditations of the emperor Marcus Aurelius*, Natural Law and Enlightenment Classics, Liberty Fund, Indianapolis. Annotations 2008. p. 117. Available at: [https://files.libertyfund.org/files/2133/Aurelius\\_1464\\_LFeBk.pdf](https://files.libertyfund.org/files/2133/Aurelius_1464_LFeBk.pdf)

<sup>2</sup> International Labour Organization, *UNGA recognized human right to a clean, healthy and sustainable environment*, 29 September 2022. Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_857164/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_857164/lang--en/index.htm)

instruments. The ICESCR redresses the unequal status and historical background from different sectors of society, that has been accorded the adjudication remedy of HR claims to “freedom from want”<sup>3</sup>.

This paper will address populist regimes that embody and represent the opposite of pro-natura principles. Its purpose is to comprehend the effects of its discourses, behaviors and actions, in order to combat those detrimental practices from a pro-environmental standpoint. It is important to pay due attention to these speeches, as they not only represent the future of the environmental situation of the specific country the leader refers to, but also has cross-border repercussions.

The protection of the environment is not confined to a specific territory, it encompasses the entire world. It is shown that the detriment of the ecosystem in a particular location can severely prejudice another in a completely different area<sup>4</sup>. For instance air pollutants released in *Country A* may be carried through the atmosphere, contributing to or resulting in poor air quality<sup>5</sup> in *Country B*. An unfortunate example of this phenomenon is seen in southern Japan and south Korea, where schools have had to suspend lessons or impose restrictions on multiple activities due to toxic chemicals smog from China’s factories<sup>6</sup>. Is worth to mention that this last country is catalogued as a populist regime<sup>7</sup>. Therefore, collective concern on environmental matters is crucial for tackling the issue. Consequently, the concern over populist regimes, which most of the occasions fail to adequately address the matter, becomes relevant to the international community. In addition, we will briefly examine the case of Mexico, a populist Latin America regime, providing a clear perspective of the situation and comparing to the earlier chapters of the present paper.

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<sup>3</sup> Referring to the four freedoms articulated by Roosevelt, 1. Freedom of speech, 2. Freedom of worship, 3. Freedom from want, 4. Freedom from fear. To not worry about vital things, such as food, clothing, housing.

<sup>4</sup> Johnson Eric, *Why do countries cooperate? The effects of Cross-border pollution*, University of Montana, Montana, United States, 2015. Available at: <https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=5451&context=etd#:~:text=These%20pollutants%20can%20travel%20great,and%20other%20countries%20as%20well.>

<sup>5</sup> European Environment Agency, *Air pollution*, European Environment Agency, November 23, 2020. Available at: <https://www.eea.europa.eu/themes/air/intro>

<sup>6</sup> West Larry, *Cross-Border Pollution: A growing International Problem*, *Treehugger*, sustainability for all. February 10, 2019. Available at: <https://www.treehugger.com/cross-border-pollution-1204093>

<sup>7</sup> Pan David, *Populism in China*, *Telos*, *Critical thinking*, November 28, 2022. Available at: <https://www.telospress.com/populism-in-china/>



## 2. Populist regimes towards ESCR.

Most of the populist regimes, often regarded as authoritarian systems, present themselves as the antagonists of the environment and its protection. This can be due to their actions usually do not follow a path that can be considered as scientifically and democratically reasoned, which is imperative when concerning environmental matters. These regimes are not particularly supporters of providing the conditions for the full enjoyment of human rights (clean, safe and sustainable development right included) consequently they deviate and deteriorate the tremendous historically effort attained so far on human rights. Whereas the outcomes of these authoritarian systems depend on the specific context, this type of regime comes in diverse guises and cannot be pinned to one specific agenda<sup>8</sup>.

Populist movements that often disguise as democracies in the rise, and wave the flag of liberal democracies in order to be regarded as such, with promises of a bright future regarding the rule of law, and their international obligations on human rights matter (CHSER). For instance, Belarus, on the 90s presented as a liberal republic, along socio-economic promises regarding their fulfillment in a short period of time<sup>9</sup>, in reality today is a repressive authoritarian regime, and didn't adopt so far what was hoped. So, promises do not equal to complying with obligations.

In recent years, many countries have witnessed the rise of populist regimes in electoral fields, due that populist leaders worldwide have five-folded during the last 20 years<sup>10</sup> and the number of people that now live under their rule is around 1.7 billion (2023)<sup>11</sup>. This resurgence could represent a serious threat for the progress achieved towards the environment during recent years, any retrogressive actions taken could be of irreparable and irreversible nature.

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<sup>8</sup> Machin Amanda, The Nature of Green Populism?, Green European Journal, 22 February 2019, Available at: <https://www.greeneuropeanjournal.eu/the-nature-of-green-populism/>

<sup>9</sup> Koc University Press, *Victory of Populism: Belarus*, January 17, 2022, Available at: <https://www.democratic-erosion.com/2022/01/17/victory-of-populism-belarus-by-ezgi-goren/>

<sup>10</sup> Gultchin Limor, Kyle Jordan, Tony Blair Institute for Global Change, *Populist in Power around the World*, 7<sup>th</sup> November 2018, Available at: <https://www.institute.global/insights/geopolitics-and-security/populists-power-around-world>

<sup>11</sup> Elgot Jessica, Wintour Patrick. *Number of populists world leaders at 20-year low*, The Guardian, 5<sup>th</sup> January 2023. Available at: <https://www.theguardian.com/world/2023/jan/05/number-of-populist-world-leaders-at-20-year-low>

### 3. Science, a pivotal player in Climate Change.

This section is dedicated to science as the catalyst for the climate concerns. Acknowledging all the brilliant minds pursuing the unknown. Their capacity to discover and address issues that today continue to demand solutions. For instance Eunice Newton, her first studies of CC began in 1856, demonstrated the GHG effect of CO<sub>2</sub> using glass cylinders and mercury thermometers, filled them with gases and places them in the sunlight. For her surprise, the CO<sub>2</sub> was the one which trapped the most heat. Furthermore, she made her theory; “*An atmosphere of that gas would give the earth a higher temperature*”<sup>12</sup>. Eunice Newton was right, but the dramatic consequences that global warming has brought to most parts of the world could not be foreseen, or even imagined.

The protection of the environment requires massive multidisciplinary approach. In order to address the issues of CC, scientific evidence is needed to demonstrate the effects and consequences. Science is not a belief system, it is rational, logical, methodology that moves forward by observation and experiments to constantly test and retest ideas and theories. It is the very foundation of our global society. Therefore, nobody can pick and choose which fragments of science evidence you want to believe and which to set aside<sup>13</sup>. Climate Change necessarily falls within the realm of the scientific field<sup>14</sup>, hence it implies that scientific data already holds the solutions to tackle this phenomenon<sup>15</sup>. This discipline plays a crucial role on the management, decision making, raising awareness, tackling climate change, and showing evidence on matter pertaining to the environment<sup>16</sup>.

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<sup>12</sup> WILKINS Alex, Eunice Newton Foote: *The woman who discovered the greenhouse effect*, New Scientist, 17 July 2023, Available at: <https://www.newscientist.com/article/2382758-eunice-newton-foote-the-woman-who-discovered-the-greenhouse-effect/>

<sup>13</sup> Maslin Mark, *Climate Change*, Oxford University Press, fourth edition, p.26. Oxford, United Kingdom. 2021.

<sup>14</sup> Vensen, Darrick. “The rhetorical limitations of the #FridaysForFuture movement.” *Nature Climate Change* 9, no. 6 (2019): 428-430. Available at: [https://www.pure.ed.ac.uk/ws/portalfiles/portal/82436604/Evensen\\_Nature\\_2019\\_RhetoricalLimitationsFridaysForFutureMovement.pdf](https://www.pure.ed.ac.uk/ws/portalfiles/portal/82436604/Evensen_Nature_2019_RhetoricalLimitationsFridaysForFutureMovement.pdf)

<sup>15</sup> Schmidt Dominik, *Post Political Populism as the Elephant in the Room: A Critical discourse analysis of Greta Thunberg’s Public Speeches on Climate Change*, The Interdisciplinary Journal of Populism, Winter 2021, Issue 2. Available at: [https://lawpop.eu/wp-content/uploads/2022/01/3.-The-Nation-is-not-enough\\_-Schmidt\\_-1.pdf](https://lawpop.eu/wp-content/uploads/2022/01/3.-The-Nation-is-not-enough_-Schmidt_-1.pdf)

<sup>16</sup> Pullin Andrew, *Environmental Evidence*, Environmental Evidence Journal, UK, 2023, Available at: <https://environmentalevidencejournal.biomedcentral.com/>

With this information, public and authorities can be aware of the climate change, and therefore take actions against what has been scientifically proved. But of course, populist rulers usually deny or dismiss this scientific consensus, they reject the expertise with unfounded speeches and declarations, in order to create scientific controversy where there is irrefutable veracity on what has been stated as truth. An example of this behavior is reflected on Michael Gove's statement,

*“People of this country have had enough of experts with organizations with acronyms saying that they know what is best and getting it consistently wrong”<sup>17</sup>.*

This can illustrate the absurdity political leaders, such as the former Lord Chancellor, behave towards what have been firmly demonstrated by decades of trial and error in the field of CC. The distrust of expertise is further exacerbated when politicians resort to bad practices. These involve bad faith rhetoric in the attempt to hold their own truth despite not being the correct one. Swearing, spectacular acts, rigid language and political incorrectness<sup>18</sup> are some of the practices to deny or minimize what is already proven and stated. In reality, the populist discourse is easy to detect and refute, as its reliability is null when comparing these speeches next to scientific consensus<sup>19</sup>. These unconvincing and void statements are inconsistent and contradictory with previous speeches or their own policies, especially when trying to ridicule or deny global environmental issues.

Other side of the problem are the populists who under “green patriotism” and national protection of the environment claim all sort of nonsense related to landscape and budget. Here's an example: The former leader of Ukip, Nigel Farage, who's “adoration” for the countryside led a strong opposition of wind turbines, which he labeled as “expensive and spoilers for the landscape”<sup>20</sup>.

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<sup>17</sup> Portes Richard, *“I think the people of this country have had enough of experts”*, London Business School, 09 May 2017, Available at: <https://www.london.edu/think/who-needs-experts>

<sup>18</sup> Moffit, B. *The Performative turn in the comparative study of Populism*. American Political Science Association comparative Politics Newsletter, vol 26, issue 2, pp 52-57, 2016.

<sup>19</sup> European Center for Populism Studies, *Climate Change Denial*, 2023. <https://www.populismstudies.org/Vocabulary/climate-change-denial/>

<sup>20</sup> Stringer Leigh, *UKIP's Nigel Farage on wind farms, global warming and Charles Darwin*, Edie, 4 June 2013, Available at: <https://www.edie.net/ukips-nigel-farage-on-wind-farms-global-warming-and-charles-darwin/>

In relation to this ambiguous argument, it is important to point that wind turbines do not release emissions that can damage the environment. Wind energy has low operating expenses since it does not rely on fossil fuels. As a result, this renewable resource is more cost-effective in the long term and compatible with environmental protection. Additionally, wind power contributes significantly in state and local tax payments every year, amounting to \$1.9 billion every year<sup>21</sup>. The issue of landscape is often used as a mere “homeland” argument, where the preservation of a traditional lifestyle outweighs the protection of the environment. However, realizing a real ponderation, the degradation and fragmentation of landscape cannot be justified in the face of sustainable development. The beauty of a scenic view cannot overshadow the protection of the same, it is the mere purpose, to preserve the essential characteristics of what is being “spoiled”. Without its protection, there is no beauty left to preserve.

#### **4. ESC Rights, a never-ending story.**

Controversy around ESCR appears to be the norm. Numerous arguments arise when discussing the justiciability of these rights. They differ significantly from Civil and Political, not equal international protection, the concept of generations of human rights, case law on the matter, among many others. These are some problematics ESCR have dealt with for quite time now.

Defending a Human Right involves more than just safeguarding one specific catalogued right. It usually entails the (in)direct protection of many other rights that are interconnected and require protection *in tandem* with the former, in order to ensure comprehensive enjoyment as well.

Human rights law recognizes that the obligations to protect, fulfill and respect these inherent rights, which are extraterritorial, according to the *Maastricht Principles*. According to the principle 29, there is an obligation to create an international enabling environment. This implies that States must jointly take steps to establish an

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<sup>21</sup> U.S Department of Energy, Wind Energy Benefits, January 2015, <https://www.nrel.gov/docs/fy15osti/62823.pdf>

international enabling environment conducive to the universal fulfilment of ESCR<sup>22</sup>. We need the environment to enjoy and exercise our Human Rights, and we need Human Rights for environmental conservation, (regarding the Access to information, public participation, and justice as fundamental rights on environment protection). The recognition and upholding of HR necessarily creates the conditions to safeguard and restore our environment; they are intertwined. Is therefore evident that a clean, healthy, and sustainable environment is vital in the enjoyment of human rights.

Environmental rights refer to the protection of a HR in relation to specific qualities of the environment. These rights must encompass measurable, prominent and functional aspects of ecological and societal dimensions<sup>23</sup>. The environmental degradation, such as deforestation, pollution, water contamination, among others directly impacts our ability to enjoy fundamental HR. Air pollution can lead to respiratory diseases. Contaminated water can damage the immune system and lead to cancer, hormone disruption, cardiovascular problems and many others<sup>24</sup>.

Arguments such as the non-enforcement (soft law), sovereignty, aid dependency, or resource constraints not only undermine the protection of the environment but are also frequently invoked by weak democratic states to justify their non-compliance with the international human rights obligations. These arguments will be further analyzed. Another significant argument, crucial for understanding the ESCR-Environment relation of the present paper is the so-called distinction between Civil-Political (first generation) rights, ESC rights (second generation) and “Green Rights” (environmental or even third generation). The former rights are often perceived as “legal” rights, while the second ones more “programme (due later)” rights. This

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<sup>22</sup> FIAN, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, social and Cultural Rights*. ETOs, for human rights beyond borders. Heidelberg, Germany. January 2013. Available at: [https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk\\_web.pdf](https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf)

<sup>23</sup> United Nations, *Human Rights and the Environment*, Geneva Environment Network, 15 August 2023, Available at: <https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment/>

<sup>24</sup> Smith Anna, *What effects does water pollution have on human health?* Medical News Today, November 23, 2020. Available at: <https://www.medicalnewstoday.com/articles/water-pollution-and-human-health>



categorization wrongly assumes that they do not require of immediate recognition to take positive obligations to grant them<sup>25</sup>.

This perspective is part of an outdated vision of human rights, which emphasizes distinctions between “generations” of human rights, that tends to portray ESCR as less important, and therefore less protection than Civil and Political rights. However, this differentiation on their nature, is not sustainable or valid in contemporary human rights law<sup>26</sup>. This distinction is often used due to the gap time of appearance of the international instrument that protects these rights and the changing conditions of circumstances. In essence, this categorization of rights is artificial and self-defeating<sup>27</sup>, according to the fundamental principles of human rights. This is because, according to the architecture of human rights, there is no difference or hierarchy on the level of protection and recognition. All rights imply a positive obligation on the states<sup>28</sup>, not only ESCR, as all rights ultimately require investment from the fiscal capacity of the state<sup>29</sup>. This generation of human rights has never been justified based on reasonable grounds, instead, it has historical and political origins rooted in discrepancies that are just a result of anti-democratic rulers who attempt to justify their unwillingness to perform and provide their obligations under the Covenant through these outdated unreasoned arguments and politics.

It is important to mention that international instruments, such as the ICESCR does not directly address the protection of the environment. However, as stated before, the rights covered by the covenant are interconnected with the Environment. Moreover, progressive interpretation and case law have settled the relationship

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<sup>25</sup> Gozler Elif, *Civil and Political Rights vs Social and Economic Rights: A Brief overview*. Journal Eren University, Institute of Social Sciences. Volume 6, Number 1, June 2017, ss. 205-214. Available at: <https://dergipark.org.tr/tr/download/article-file/318915>

<sup>26</sup> FAIR, *Access to Justice for Economic, Social and Cultural Rights*, Training materials on Access to Justice of Migrant children, Module 3, April 2018, Available at: <https://www.icj.org/wp-content/uploads/2018/06/Europe-FAIR-module-3-Training-modules-2018-ENG.pdf>

<sup>27</sup> United Nations, *Frequently asked questions on Economic, Social and Cultural Rights*, Fact Sheet No. 33, Office of the United Nations High Commissioner for Human Rights, December 2008, Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet33en.pdf>

<sup>28</sup> Holmes Simon, *Climate Change, sustainability, and competition law*, Journal of Antitrust Enforcement, Volume 8, Issue 2, July 2020, Pp. 354-405. Available at: <https://doi.org/10.1093/jaenfo/jnaa006>

<sup>29</sup> Landman Todd, *The scope of Human Rights: From Background Concepts to Indicators*, University of Essex, Human Rights Centre, 11 March 2005, Oslo. Available at: [http://www.dhnet.org.br/direitos/indicadores/experiencias\\_mundo/landman\\_hr\\_indicators.pdf](http://www.dhnet.org.br/direitos/indicadores/experiencias_mundo/landman_hr_indicators.pdf)

between the environment and ESCR, implying its relevance with the scope of the mentioned Covenant<sup>30</sup>. Substantial case law exists on this topic. Nonetheless, we will briefly focus on one case from the ECtRH, which has rendered judgements on some 300 cases related to the environment, clarifying to the states their obligations towards the environment. The Court mainly accomplishes this by enforcing due diligence to prevent and protect serious and immediate risks of foreseeable environmental damage. Undoubtedly, the Court stands as one of the most prominent advocates for environmental safeguarding<sup>31</sup>. Nevertheless, the present and future challenges the Court faces towards the grant of the right itself are of a prolonged nature. Integrating ecological baseline standards into the Court's existing fair balance assessment would facilitate the transition of the Convention for the recognition and direct implementation of the right (CHSER) in the future<sup>32</sup>. So far is clear that ESCR must be protected under international HR Law, and discrepancies often arise as a result of political maneuvering to evade international obligations.

#### **4.1 ECtHR. Case *Kyrtatos v. Greece***

The applicants challenged the Government's failure to comply with two decisions from the National Supreme Administrative Court annulling two permits for constructions next to their property. These were in an area concerning a swamp, which was constitutionally protected. Therefore, the permits were illegal. Nonetheless the government refrained for more than seven years to take proper measures to comply with the enforceable judicial decision. The urban development affected their life and environment. Relying on art.8 of the Convention, which provides the Right to respect for private and family life, home and correspondence.

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<sup>30</sup> Atapattu Sumudu, *Environmental rights and International Human Rights Covenants: What standards Are Relevant?*, Cambridge University Press, 09 May 2019. Available at: <https://www.cambridge.org/core/books/abs/environmental-rights/environmental-rights-and-international-human-rights-covenants-what-standards-are-relevant/1C8650A408DF4F5D3938C9BA0DCA554C>

<sup>31</sup> Vigne Sarah, Universal group and Louis Mason, All eyes turn to the European court of Human rights to assess future of rights-based climate litigation. Universal Rights group, February 1, 2022. Available at: <https://www.universal-rights.org/all-eyes-turn-to-the-european-court-of-human-rights-to-assess-future-of-rights-based-climate-litigation/>

<sup>32</sup> Kobylarz Natalia, Grant Evadne, Human rights and the Planet: the future of environmental human rights in the European Court of Human Rights, Elgaronline, Law 2022, 16 September 2022, Available at: <https://doi.org/10.4337/9781802204292.00004>

The Court observed that environmental pollution could affect the individuals well-being<sup>33</sup>. Nevertheless, even assuming that environment, flora and fauna were severely damaged by the urban development on the area, the Court stated:

*“the alleged damage was not of such a nature as to directly affect their own rights under art. 8 § 1 of the convention (...) domestic legislation are more pertinent in dealing with this particular aspect<sup>34</sup>.*

Here lies both the issue and reason of the Court: neither article 8 nor any other section of the Convention were explicitly designed to offer a comprehensive protection on the environment as such. As well, the key factor for a breach of the mentioned article was the existence of a detrimental effect on an individual's private or family sphere, rather than the deterioration of the environment itself<sup>35</sup>. Although, as seen in this case, there are limits of “greening” the art.8 of the Convention.

Additionally, it is accurate that the protection of the environment starts with domestic law. There is an evident sense of frustration with how domestic policies are responding to CC, these policies are not doing enough, or inadequate to address the urgent matter of the Climate emergency. Therefore, claims made on domestic instances end in the failure of the individuals aiming that their environmental rights are recognized and protected. As a result, international instruments and courts naturally emerge as the last resort to claim climate rights<sup>36</sup>. The Court offers relief (to the extent of possible) from environmental harm in certain cases when local governments provide insufficient or null support. We simply cannot rely entirely on international law and courts the whole time. The Convention is clear on the positive obligations of the Member states, for instance on art.2 (1), where the State is not only to refrain from unlawful taking of life, but taken appropriate steps to safeguard

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<sup>33</sup> InforMEA, *Case of Kyrtatos v. Greece*, Access information on Multilateral Environmental Agreements, 2012, Available at: <https://www.informea.org/en/court-decision/case-kyrtatos-v-greece>

<sup>34</sup> UN Environmental Programme. *Case of Kyrtatos v. Greece*, European Court of Human Rights. 22 May 2003. Available at: <https://leap.unep.org/countries/gr/national-case-law/case-kyrtatos-v-greece>

<sup>35</sup> Fernandez Esteban, *Environmental Cases in the ECHR. A focus in noise pollution*, Yearbook on humanitarian Action and Human Rights, Deusto University, ISSN: 1885-298X, N.6/2009, Bilbao, 133-146. Available at: <https://djh.revistas.deusto.es/article/download/1106/1284/>

<sup>36</sup> Pedersen O.W. *Any role for the ECHR When it comes to Climate Change?* European Convention on Human Rights Law Review, Brill Nijhoff, 2022, 17-22. Available at: <https://doi.org/10.1163/26663236-bja10032>

the lives of those within its jurisdiction<sup>37</sup>. These obligations become relevant when an argument is made that a State has neglected or failed to fulfill with these<sup>38</sup>.

In the case, protection from illicit environmental degradation was subordinated to the existence of an impairment of the right to private and family life. This limit is in no way functional to the protection of the environment. Therefore, there is a need to legislate in the environmental matters. The proper fulfilment of Greece, regarding its positive obligations should have been respecting and enforcing policies where the environment damage itself constituted an illicit (such as the Law No. 1650 on the protection of the environment, entered into force in 1986)<sup>39</sup>. Nevertheless, the prefect excluded the contested buildings from demolition. As well, the compliance of the authorities to attend the Supreme court's decisions. And for the ECtHR, ideally a provision that, as we said, protect the environment itself, although we are striving for possible future outcomes and venturing into pro-environment speculations.

Once we recognized the imperative necessity of an environmental right, it becomes natural to question why existing norms or, in this case International Instruments, that were previously considered appropriate, should now be subject to fresh scrutiny?

Due to the ever-changing circumstances. International Human Rights Instruments are living instruments, which in words of Judge Alvarez of the ICJ, "*must be interpreted without regard to the past, only with regard to the future*"<sup>40</sup>. These should be interpreted in the light of present-day conditions, considering sociological, technological and scientific advancements, as well as evolving standards in the field of HR. This means a need of greater firmness in assessing breaches of the fundamental values of democratic societies<sup>41</sup>. Regarding this view, environmental

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<sup>37</sup> Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*. Council of Europe Treaty Series 005, Council of Europe 1950. Available at: [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG)

<sup>38</sup> Vladislava Stayanova, *Framing Positive Obligations under the European Convention on Human Rights Law: Meditating between the Abstract and concrete*, Human Rights Law Review, volume 23, Issue 3, September 2023. Available at: <https://doi.org/10.1093/hrlr/ngad010>

<sup>39</sup> United Nations, Greece, *Law No. 1650 on the protection of the environment*, FAOLEX Database, Food and Agriculture Organization of the United Nations, 01 January 1986, Available at: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC051736/>

<sup>40</sup> White Nigel, Moeckli Daniel, *Treaties as "living Instruments"*, Cambridge University Press, January 25, 2016. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2720539](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2720539)

<sup>41</sup> European Court of Human Rights, *The Convention as a Living instrument at 70*, Judicial Seminar 2020, 2020. Available at: [https://www.echr.coe.int/documents/d/echr/Seminar\\_background\\_paper\\_2020\\_ENG](https://www.echr.coe.int/documents/d/echr/Seminar_background_paper_2020_ENG)

rights should be placed as one of the utmost priorities in the state's agenda prioritizing in its protection and prevention, as it presents itself as one of the most urgent topics to be dealt with immediately, as the Environment continues to deteriorate. Simplified as, a breach to environment equates to a transgression against a foundational aspect of society. The last argument finds resonance in moral philosophy, particularly Taoism, which has engaged with the evolution of norms, albeit in different contexts, thousands of years ago. This vision of Taoist follows:

*“A rule once formulated in precise terms cannot adapt itself to changing circumstances. What was right in a previous age need not continue to be right in subsequent ages. Because the lapse of time new rules had to be added and obsolete ones omitted”<sup>42</sup>.*

Regarding the justiciability of Environmental rights, we can dimension the issue as follows: There is no direct provision that protects the environment, consequently this represents a massive danger for the enjoyment of ESCR. There is a failure in providing protection to a right contained in the same catalogue of rights, from which all the other rights depend upon for their realization. The IPCC in its latest report, stated that Climate Change represents a threat for the enjoyment of ESCR, and yet no clear provision is given. *There are still many areas to cover for the full protection of these rights.*

## **5. ICESCR. Article 2 Analysis.**

Now one of the main points of the paper, regarding the second article of the ICESCR. An argument often used, is that ESC rights can hinder economic development and growth of a state. This is because social development requires strategies that require a high-quality economic expenditure to grant these rights<sup>43</sup>. Consequently, populist regimes use art. 2 ICESCR as a shield, that under this provision they have the flexibility to gradually develop and recognize these rights.

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<sup>42</sup> Tzu Lao, Tao Te Ching, Penguin Classics, Penguin Books, 081. Translation first published in 1963. Ltd, 80 Strand, London WC2R 0RL. England. P.58.

<sup>43</sup> Gianviti Francois, Chapter 1 Economic, Social and Cultural Rights and the International Monetary Fund, IMF eLibrary, 2005, Available at: <https://www.elibrary.imf.org/display/book/9781589063341/ch001.xml>



As well, these regimes assert that ESCR are non-justiciable<sup>44</sup> and set aside of the agenda. We need to analyze the article in question to determine on three approaches to highlight the absurdity of these arguments. The analysis is divided into three sections corresponding to a specific approach of art.2 of the ICESCR. Although these aspects are interrelated, they have different areas to cover. Following this, a brief mention of some that have been employed to weaken the obligations of states under this Covenant. Finally, an examination of the biases these arguments present. The relevant provision in question follows as:

1. *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*<sup>45</sup>.

### **5.1 First approach, Maximum of the resources.**

This clause is pivotal in taking steps towards the full realization of ESC rights. States need to guarantee these rights, they have the obligation to primarily respect, protect and fulfill<sup>46</sup>. To attain such duty, states need to mobilize its resources in order to have funds available and therefore have the capacity to do so<sup>47</sup>. Here is the problem, it is true that some states are hampered by resources constraints to (on a reasonable and desirable amount) provide these material and non-material conditions with a view of immediately grant these rights, so it can only be achieved over an un-

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<sup>44</sup> Daci Jordan, “Justiciability of Economic, social and Cultural Rights”, Wisdom University, Tirana, Albania, 3 November 2022, Available at: <https://academicus.edu.al/nr9/Academicus-MMXIV-9-055-068.pdf>

<sup>45</sup> UN General Assembly, International on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly of 16<sup>th</sup> of December 1966, entry in force 3 January 1976. Available at: <https://www.ohchr.org/sites/default/files/cescr.pdf>

<sup>46</sup> United Nations, Chapter two: The Convention in detail. Obligations of States parties under the convention, United Nations, Department of Economic and social Affairs Disability, Geneva, Switzerland, 2023. Available at: <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-two-the-convention-in-detail-4.html>

<sup>47</sup> Bylberg Ann, Hofbauer Helena, *Article 2. Governments Budgets*, 2014. Available at: <https://internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf>

determined period of time<sup>48</sup> depending mostly on the state's importance and institutional organization. Additionally, not every country possesses the same budgetary and resource capacities: some require a better economic and political atmosphere in order to grant these rights. Here's an illustrative example, provided by the ESC Council; *while state Party A which is richer in resources, State B has scarce resources. Both the same obligations, but the first is expected to secure a higher level of right realization than the latter*<sup>49</sup>.

On principle is a reasonable measure, simple as, if a state lacks the resource, it cannot provide the conditions for a specific right to be enjoyed, for instance, if a state does not allocate the budget for water source treatment, then is affecting the right to health<sup>50</sup>. The availability of resources encompass for financial, technological, cultural, among others. While governments budgets are crucial for the realization of these rights, is important to note that the increase of the state's incomes does not equally correspond to improvements on the people's rights<sup>51</sup>. Nevertheless, regarding the dimension of Human Rights, a lack of resources as justification for intentional postponement of progress cannot justify the non-realization of ESC rights.

Unfortunately, populist regimes tend to take shelter as *State B*, and therefore excuse themselves under this economic impossibility. They often misinterpret the provisions, making a flawed assumption that reflects their ill-will towards ESCR. Populism, which is often associated with movements that places partial interests of the mobilized<sup>52</sup> or prioritize economic matters before ecological ones. Resources are often diverted, misused, or wrongly wasted, mostly for personal profit. For instance, an example of

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<sup>48</sup> UN Office of the United Nations High Commission for human Rights, *Frequently asked questions on Economic, Social and Cultural Rights*. Fact sheet no. 33, Geneva, Switzerland, Available at: <https://www.ohchr.org/sites/default/files/documents/publications/factsheet33en.pdf>

<sup>49</sup> United Nations, Economic and Social Council, *Report of the United Nations High commissioner for Human rights*, Geneva, 25 June 2007, Available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E\\_2007\\_82\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E_2007_82_en.pdf)

<sup>50</sup> UN Office of the United Nations High Commission for human Rights, Economic, social and Cultural Rights, Geneva. Available at: <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights#:~:text=Economic%20social%20and%20cultural%20rights,and%20sanitation%2C%20and%20to%20work.>

<sup>51</sup> Blyberg. *Supra* note 46.

<sup>52</sup> Jan Muller, *What if Populism?* University of Pennsylvania Press, Philadelphia, 2016. Available at: <https://link.springer.com/article/10.1057/s41296-017-0129-8>

this trend can be seen in Tanzania, where populism started to develop since 2015. The Ministry of Health and social Welfare spent a considerable amount of resources on traveling, sitting allowances and the purchase of luxurious vehicles<sup>53</sup>. Despite its abundant natural resources and biodiversity, Tanzania is one of the lowest ranked countries regarding environment investment, currently standing on the 119<sup>th</sup> place out of 167 countries, according to the Legatum Prosperity Index<sup>54</sup>. This highlights a clear correlation between budget allocation and its misuse. Instead of investing in environmental initiatives and programs that could enhance biodiversity and improve livelihood conditions, the state allocates the budget to unnecessary expenditures.

Corruption plays a significant role in this context. Very often, budget allocations intended for the development of ESCR only see a fraction of those funds reaching their intended purpose due to the lack of proper monitoring, corrupt practices and institutions that tolerate these practices. Consequently, there is a reduction on the economic efficiency of the governments<sup>55</sup>, significantly constrains the field and realization of ESCR<sup>56</sup>. Expenditures must be properly monitored to ensure the realization of these rights; the essential and vital needs of the population cannot be overshadowed by personal benefits.

It is important to recognize that a mere allocation of the state's budget does not guarantee the fulfillment of rights; it falls short. Genuine commitment lies in the proper and careful allocation of resources towards programs, plans and projects that protect the environment, thereby advancing or enhancing CHSDR. This ideal practice is also called "Green budgeting", which using the tools of budgetary policy making aims to reach climate and environment objectives<sup>57</sup>.

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<sup>53</sup> Makulilo Alexander, *Against Foreign Capital? The populist temptation in Tanzania*, Seton Hall Journal of Diplomacy and International Relations, Fall 2017, Available at: <http://blogs.shu.edu/journalofdiplomacy/files/2018/02/Against-Foreign-Capital-The-Populist-Temptation-in-Tanzania.pdf>

<sup>54</sup> The 2023 Legatum Prosperity Index, Tanzania: Prosperity score 49.2 (117<sup>th</sup>), Legatum institute, 2023, Available at: [https://www.prosperity.com/download\\_file/4631/1550?file=Tanzania\\_2023\\_Picountryprofile.pdf](https://www.prosperity.com/download_file/4631/1550?file=Tanzania_2023_Picountryprofile.pdf)

<sup>55</sup> Mauro Paolo, *Why Worry About Corruption?*, International Monetary Fund, Economic Issues. No. 6. February 1997. Available at: <https://www.imf.org/EXTERNAL/PUBS/FT/ISSUES6/INDEX.HTM>

<sup>56</sup> Blyberg, *supra* note 50

<sup>57</sup> European Commission, *Green budgeting in the EU*, European Commission, Economic and Finance, 2022. Available at: [https://economy-finance.ec.europa.eu/economic-and-fiscal-governance/green-budgeting-eu\\_en](https://economy-finance.ec.europa.eu/economic-and-fiscal-governance/green-budgeting-eu_en)

In sum, “the maximum of available resources standard” does not imply that a limitation on national resources should not serve as a shield for non-compliance, on protecting and granting ESCR. It’s imperative to understand it as a standard compliance, not an excuse for its opposite<sup>58</sup>. The failure to mobilize the maximum of the resources in an effort to prevent foreseeable HR harm cause by CC constitutes a violation of State’s obligation with regard to the ICESCR<sup>59</sup>.

## 5.2 Second approach, *Progressive Realization*.

This approach, encompassing a core obligation, involves taking appropriate measures to progressively attain the full realization of the Economic, Social, and Cultural rights. This obligation should be understood in conjunction with the maximum available resources. Governments must demonstrate continual improvement in people’s conditions by the deployment of these resources. This means that these rights are self-evident. Regardless of the availability of resources, states bear an immediate obligation to take appropriate actions to improve these rights over a discretionary “short” period of time<sup>60</sup>. Furthermore, is a flexible device, which understands the realities and struggles of the global system, encompassing economics, politics, and other factors are not easy to overcome. States may encounter significant barriers on providing at full ESCR, in part due capacity constraints<sup>61</sup>, as previously said, these rights are dependent on economic growth, providing greater capacity for the state to provide them<sup>62</sup>.

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<sup>58</sup> Porter Bruce, *Rethinking Progressive Realization: How should it be implemented in Canada?*, Social rights Advocacy Center, 04 June 2015, Available at: <https://www.socialrights.ca/documents/publications/Porter%20Progressive%20Implementation.pdf>

<sup>59</sup> United Nations, *Climate Change and the International Covenant on Economic, Social and Cultural Rights: statement by the Committee on Economic, Social and Cultural Rights*. UN Committee on Economic, Social and Cultural Rights (64<sup>th</sup> Session) Geneva, 2018. Available at: <https://digitallibrary.un.org/record/1651395>

<sup>60</sup> International Justice Resource center, *Economic, social and cultural rights*, IJRC, 2022. Available at: <https://ijrcenter.org/thematic-research-guides/economic-social-and-cultural-rights-2/>

<sup>61</sup> Pew, *To overcome challenges to evidence-based policymaking, States Need outside Help, Project Results First*, September 27, 2022. Available at: <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2022/09/to-overcome-challenges-to-evidence-based-policymaking-states-need-outside-help>

<sup>62</sup> Petel Mathias, Vander Putten Norman, *Economic, Social and Cultural rights and their dependence on the Economic growth paradigm: Evidence from the ICESCR system*. Netherlands Institute of Human Rights. Volume 39, Issue 1. February 18, 2021. Available at: <https://journals.sagepub.com/doi/full/10.1177/0924051921994753#body-ref-fn101-0924051921994753>

However this mechanism is not meant to be ill-interpreted, depriving it from its meaningful good faith content. It must be read as an obligation the state need to fill. The objective of this provision is to impose an obligation to move as expeditiously and effectively as possible to attain that goal<sup>63</sup>. Ideally, this would lead to the welfare of the state, where the people can fully enjoy their rights, living in harmony and according to their life plans, with no obstructions or limitations (as long as they're lawfully on a lawfully manner) to reach their full potential.

The UNGC3 states that steps towards this goal shall be taken within a reasonably short time, to concrete the obligations of the state. However, some ESC rights are of immediate effect, imposing an expeditious obligation on State parties to undertake specific and targeted measures for the full realization of the rights<sup>64</sup>. The state has as an obligation of making the best effort disregarding the level of available resources for progressive realization happen. The issue is when states refuse or undermine their international obligations.

In comparison to this provision, we can relate the “*Green Colonialism*” concept, where developing countries relate their political and economical situation to their sovereignty and autonomy. Wherein more developed countries are perceived as an authority dictating to developing countries how and when they should develop. The concept of green colonialism implies that many countries have resisted the call to cut emissions, stating that it would damage their development and sovereignty<sup>65</sup>. A similar situation can be observed when it comes to providing ESCR from developing countries. They argue that they cannot be pushed or coerced to grant these rights and often encounter resistance to do so, opting to address ESCR only on their own terms and timelines, which with a broad margin of appreciation, does not always yield timely or proper results.

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<sup>63</sup> UN Committee on Economic, Social and Cultural Rights. *General Comment No. 3: The Nature of State Parties obligations* (art. 2. Para 1. Of the covenant) Fifth session, 1990. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT%2fCESCR%2fGE C%2f4758&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT%2fCESCR%2fGE C%2f4758&Lang=en)

<sup>64</sup> Vienna Declaration and programme of action, *Fact Sheet No.16 (Rev 1)*, The Committee on Economic, Social and Cultural Rights, (A/CONF. 157/24) adopted by the World conference on Human Rights, Vienna. June 25, 1996. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet16rev.1en.pdf>

<sup>65</sup> Earth.Org, *What is Green Colonialism?*, Africa Americas Asia Europe Global Commons Oceania, May 25<sup>th</sup> 2021, Available at: <https://earth.org/green-colonialism/>



This resistance is one of the reasons why some Parties consider article 8 of the ESC Optional Protocol as “inappropriate”, This provision developed to response this debates regarding the justiciability of the ESCR. The reasonableness standard, a mechanism which allows the Committee an assessment of ESCR on a determined country on the steps taken in order to grant these rights. In the Optional Protocol to the International Covenant on ESCR on the article 8 mentions the faculties of a Committee to review the ESC situation of member states<sup>66</sup>:

*“The Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant, and (...) may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant<sup>67</sup>.”*

This provision outlines how the Committee addresses the failures of States to adopt measures to fulfill the ICESCR. In principle, this seems to be an adequate control and surveillance of the Committee on the State Parties. Nevertheless, has been deeply criticized by states within their judicial institutions, that have consistently deferred to the state on cases that engage ESCR<sup>68</sup>. Statements such as that the Committee was being too intrusive in scrutinizing “inappropriately” the States, in matters of national policies and budgetary decisions<sup>69</sup>. The Committee conducts these reviews on State Partys to ensure the correct enforceability of the ESCR. This emphasis on accountability is the heart of HR, as its serves as the foundation for promoting cultural change through the reinforcement of legal safeguards and the implementation of judicial enforcement. This means that when it comes to the

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<sup>66</sup> Porter Bruce, *Reasonableness in the Optional Protocol to the ICESCR*, Available at: <https://www.socialrights.ca/documents/Reasonableness%20in%20the%20OP-ICESCR.pdf>

<sup>67</sup> United Nations, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, United Nations Human Rights, Office of the High Commissioner. 63<sup>rd</sup> session of the General Assembly by resolution A/RES/63/117. 10 December 2008, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/477/81/PDF/N0847781.pdf?OpenElement>

<sup>68</sup> Courtis C. *Commentary on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*. Inter-American Institute of Human Rights, International Commission of Jurists, France, 2008. Available at: [https://academy.ishr.ch/upload/resources\\_and\\_tools/IIDH%20commentary%20on%20OP-ICESCR\\_en.pdf](https://academy.ishr.ch/upload/resources_and_tools/IIDH%20commentary%20on%20OP-ICESCR_en.pdf)

<sup>69</sup> Geneva Academy, *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Université de Geneve, Geneva, July 2013. Available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20optional%20protocol%20In%20brief%202.pdf>

realization of the rights to an adequate standard of protecting ESCR have limited recourse to Human Rights law when their rights are not met in practice<sup>70</sup>.

An example of this faculty of the Committee: The case *Grootboom et al.*, sets the reasonableness test as the standard reviewing ESC. The judgement highlighted the failure of the State of South Africa on providing housing to individuals in need. Therefore, acted unreasonably. The Committee ordered to review their National housing policy reflecting the obligation to provide suitable housing conditions, as mandated in the country's Constitution. South Africa was therefore under the obligation from an international instrument to on short and long term solve this unreasonableness<sup>71</sup>. This case underscores how international instruments can compel states to address and rectify their failures in complying with their international obligations. The mentioned assessment of reasonableness must be both purposive and contextual, and that a policy must be consistent with the purpose of the ICESCR reads as a whole, as the Human Right Committee has affirmed<sup>72</sup>.

Populist regimes often delay these obligations arguing the lack of structural capacity and resources, diverting the available ones to different areas. However, such conducts should not signify the reduction or denial of ESC rights. Similarly, the argument that a lack of indicators on how to address these rights leads to a state's discretionary measures on implementing these rights. Nevertheless, this margin of discretion is not absolute. In general, when a state exercises a wide margin, it becomes a subject to a test of unreasonableness<sup>73</sup>.

Therefore, the ECtHR defers from local authorities without changing the general principles, traditions, constitutional values, or sensitive issues that pertain to

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<sup>70</sup> Boyle Katie, *Models of Incorporation and Justiciability for Economic, Social and Cultural Rights*, Scottish Human Rights Commission, November 2008, Available at: [https://www.scottishhumanrights.com/media/1809/models\\_of\\_incorporation\\_escr\\_vfinal\\_nov18.pdf](https://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf)

<sup>71</sup> Government of the Republic of South Africa and Others v Grootboom and others (CCT11/00) 2000, ZACC 19; 2001 (1) S4 46; 2000 (11) BCLR 1169. October 4<sup>th</sup>, 2000. Available at: <http://www.saflii.org/za/cases/ZACC/2000/19.html>

<sup>72</sup> United Nations Human rights Committee, *Case Sandra Lovelace v. Canada Communication No R.6/24*, (36<sup>th</sup> Session), 1981, U.N. Doc. Supp. No, 40 A/36/40 (1981). Available at: <http://hrlibrary.umn.edu/undocs/session38/24-1977.htm>

<sup>73</sup> European Court of Human Rights, *Case of the Communist Party of Russia and others v. Russia*, Application no. 29400/05, Judgement, 19 June 2012, Available at: <https://electionjudgments.org/en/entity/1p3jad5tgp4>

determining the minimum level of protection required<sup>74</sup>. In other words, the ECtHR emphasizes that States must ensure proper ground for ESCR to develop and their enjoyment without necessarily altering or undermining norms, sovereignty, or other government prerogatives.

### 5.3. *Third approach, Adoption of legislative measures*

Environmental policies are crucial and indispensable to attain the desirable objectives related to environmental protection, which in principle should be appropriate and coordinated among governmental institutions. However, under populist regimes, the situation takes a different turn. Instead on making progress on essential matters like achieving such as net zero emissions, promoting circular economies, zero waste actions – opportunities for clean development, resource efficiency and a sustainable future<sup>75</sup>- such regimes often result to increased ghg emissions and lower overall environmental performance<sup>76</sup>.

Proper legislation is highly desirable, domestic systems shall label ESCR as justiciable<sup>77</sup> and enforceable before a Court. Furthermore, legislative acts on Human rights (such as CHSDR) and environment with due diligence enhancing access to judicial remedy is expected<sup>78</sup>. Legislative measures are of vital importance, the implementation of ESCR depends almost entirely on public policies and programs<sup>79</sup>.

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<sup>74</sup> European Court of Human Rights, *Case of Eweida et al. v. The United Kingdom*, Application number: 48420/10, 59842/10, 51671/10 and 36516/10, 15<sup>th</sup> of January 2013, Available at: <https://www.equalrightstrust.org/ertdocumentbank/Case%20Summary%20Eweida%20and%20others%20v%20UK.pdf>

<sup>75</sup> DGB Editorial group, *Net zero and a circular economy: Top 3 opportunities and challenges*, DGB Group, May 9<sup>th</sup>, 2023. Available at: <https://www.green.earth/blog/net-zero-and-a-circular-economy-top-3-opportunities-and-challenges#:~:text=In%20a%20circular%20economy%2C%20products,sustainable%20and%20net%2Dzero%20future.>

<sup>76</sup> Bosworth, Kai, *The people's climate March: Environmental populism as political genre*, Political Geography. 2021. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0962629820303449>

<sup>77</sup> Australian Human Rights Commission, *Nature of obligations regarding ESC rights*, 2020. Available at: <https://humanrights.gov.au/our-work/rights-and-freedoms/nature-obligations-regarding-economic-social-and-cultural-rights>

<sup>78</sup> Finnish Government, Perspective paper, *Business and Human rights, towards a common Agenda for Action*, Finland's Presidency of the Council of the EU, Conference Publication, 2 December 2019. Available at: [https://tem.fi/documents/1410877/3084000/BHRConference\\_Perspectives\\_Paper+2019FI.pdf/c3ca6571-537e-99e8-93f1-721d6821fba1/BHRConference\\_Perspectives\\_Paper+2019FI.pdf](https://tem.fi/documents/1410877/3084000/BHRConference_Perspectives_Paper+2019FI.pdf/c3ca6571-537e-99e8-93f1-721d6821fba1/BHRConference_Perspectives_Paper+2019FI.pdf)

<sup>79</sup> United Nations, *Report if the UN High Commissioner for Human Rights*, Economic and Social council, Geneva, 25 June 2007, Available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E\\_2007\\_82\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E_2007_82_en.pdf)

This underscores the need for an intersectional approach involving different areas of the governments structure. In other words, for effective environmental law, legislation is the backbone of the field<sup>80</sup>. Additionally, the former Special Rapporteur on human rights and environment Mr. John Knox, delineated three sets of obligations: procedural obligations, substantive obligations and obligations relating people in vulnerable situations<sup>81</sup>. On UNCN3, the Committee, in terms of political and economic systems is neutral. It mentions that is entirely upon the need to legislate, regardless on socialist, populist or capitalist system<sup>82</sup>. Consequently, achieving justiciability on domestic laws, allowing individuals to seek a remedy for addressing possible violations on environment must be attainable.

Moreover, International Human Rights Courts, which have the faculty to compel states (parties) to fulfil these obligations, are regarded by these regimes as an obstacle to the fulfillment of the populist agenda and their sovereignty rights<sup>83</sup>. However there's another tool that can be used for their ill-benefit. Given the margin of appreciation the states enjoy, it is sometimes used as means for disproportionate discretionary actions. This decision-making mechanism upon the same state allows it to determine how they protect and grant certain rights on the way they protect and grant certain right, with no coercion or interference from a binding court or authority on the proper methods of ensuring and protecting those rights. For these regimes it represents an adequate opportunity for denying these rights. Certainly there's a minimum level of protection, but again the progressive evolvement of that country needs to happen<sup>84</sup>, and (hopefully) correlatively higher level of protection will be granted.

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<sup>80</sup> Scotford Eloise, *Legislation and the Stress of Environmental problems*, *Current Legal problems*, Oxford Academy. Volume 74, Issue 1, P. 299-327. October 23, 2021. Available at: <https://academic.oup.com/clp/article/74/1/299/6409430>

<sup>81</sup> UN General Assembly, *Human rights obligations to the enjoyment of a safe, clean, healthy and sustainable environment*, 19 July 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/231/04/PDF/N1823104.pdf?OpenElement>

<sup>82</sup> United Nations. *Supra* note. 62.

<sup>83</sup> Khaliq Urfan, *Populist and the Protection of Human Rights in Europe: The Challenge from Within*, Chatham House, 10 october 2022. <https://www.chathamhouse.org/2022/10/reclaiming-human-rights-changing-world-order/10-populism-and-protection-human-rights-europe>

<sup>84</sup> Cepeda, Manuel. O'Regan Kate, Scheinin Martin, *The development and Application of the concept of the progressive realization of Human Rights: Report to the Scottish National Taskforce for Human Rights Leadership*,

However, if local institutions fail to move forward, it can result in an endless-circle of timeless progression. In sum, binding Court's do not possess a broad scope for obliging regimes that are socially and culturally conservative<sup>85</sup>. They cannot address many matters raised by populist rulers, such as the reassertion of sovereignty, under the guise of subsidiarity<sup>86</sup>. These are common populist practices, who defend the bad practices and repudiate progress and truth.

This makes the justiciability of these rights on the domestic level harder, as populist movements are more influential and powerful within local dimensions. ESCR get the worst part, and are often even denied as Human Rights, considering them as mere political principles<sup>87</sup>, or "pragmatic rights" that have no self-executing nature.

These considerations are completely contrary of what *pacta sunt servanda* (interpretation in good faith of the treaties<sup>88</sup>) principle embodies. In reality, HR are interdependent and indivisible. No system should deny the realization of these rights, on the contrary, their laws and policies shall reflect the maximum level of protection and realization of these rights, constituting an elemental feature of a democratic state<sup>89</sup>. All rights need to be treated on equal footing; no right is more important than the other<sup>90</sup>.

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Bonavero Reports, January 28, 2021. Available at: [https://www.law.ox.ac.uk/sites/default/files/migrated/bonavero\\_report\\_12021\\_1.pdf](https://www.law.ox.ac.uk/sites/default/files/migrated/bonavero_report_12021_1.pdf)

<sup>85</sup> Petrov Jan, *The populist challenge to the European Court of human Rights*, Masarykova Univerzita, 2020. Available at: [https://is.muni.cz/publication/1678242/Petrov\\_clanek.pdf](https://is.muni.cz/publication/1678242/Petrov_clanek.pdf)

<sup>86</sup> Alston Philip, *Conjuring up New Human rights: A proposal for quality control*, American Journal of International Law 78, 3, 1984, p.607, [https://www.jstor.org/xml:lang="en-US">stable/2202599](https://www.jstor.org/xml:lang=).

<sup>87</sup> Krause Catarina, Rosas Allan, *"Economic, Social, and Cultural Rights": A textbook edited by Asbjorn EIDE*, Kluwer Academic Publishers, Martin Nijhoff Publishers in Netherlands 1995. pp. 17.

<sup>88</sup> United Nations, *Vienna Convention on the Law of Treaties, art. 26, Treaty series, vol. 1115*, p. 331, 23 May 1969, Vienna.

<sup>89</sup> McCall-Smith Kasey, *Minimum standards for delivering Economic, Social and cultural rights, Academic Advisory Panel to the National Taskforce for Human rights Leadership Minimum standards for delivering Economic, Social and Cultural rights*. June 22, 2020. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2021/01/national-taskforce-for-human-rights-leadership-academic-advisory-panel-papers/documents/aap-paper-kasey-mccall-smith---esc-rights/aap-paper-kasey-mccall-smith---esc-rights/govscot%3Adocument/AAP%2BPaper%2B-%2BNationalTaskforce%2B-%2BKasey%2BMcCall-Smith%2B-%2BESC%2BRights%2B-%2B%2BJuly%2B2020.pdf>

<sup>90</sup> UN Human Rights Office of the High Commissioner, *What are Human Rights?* Geneva, 2022. <https://www.ohchr.org/en/what-are-human-rights#:~:text=All%20human%20rights%20are%20indivisible,economic%2C%20social%20and%20cultural%20rights>.

Whilst legislation can be compromised by politics and time pressures, that in the end, generates valid concerns over legislative quality. Environmental policies require of constant interpretation, evaluation and reevaluation<sup>91</sup> and evidently scientific influence.

Another barrier related to justiciability lies in the existence of legislation. While legislation may exist, their provisions are null if no correct implementation and control follows. The failure to ensure effectiveness, efficiency and appropriateness<sup>92</sup> leads to adverse environmental outcomes. This can result from disagreement between economic and political consensus and will to properly implement, marked by incomplete specification of objectives, inappropriate agencies for implementation, conflict of interests, incentive failures, conflicting directives, incompetence from those responsible on charge to implement policies, inadequate administrative resources, inconsistencies, among many others. Governments must emphasize the importance of translating intentions into results<sup>93</sup>.

The absence of evaluation on the existing environment policies often serves as a façade to “*de facto*” fulfill the international obligations that states have. These instruments, which are often narrow, inappropriateness, and lack of regular evaluation, inevitable lead to a policy failure<sup>94</sup>. Urgent reforms are needed, wherein legislative strategies aimed at realizing ESCR, must be aligned to national development planning. This ideally would ensure the correct political economical and institutional consensus, ultimately directed to attain sustainable funding for the implementation of ESCR<sup>95</sup>. As well, national programs and plans need to define and incorporate indicators and benchmarks specifically designed to assess progress in

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<sup>91</sup> Hudson Bob, Hunter David, Peckham Steohen, *Policy failure and the policy-implementation gap: Can policy gao support programs help? Policy design and practice*, 2:1, 1-14. February 26, 2019. Available at: <https://www.tandfonline.com/doi/full/10.1080/25741292.2018.1540378>

<sup>92</sup> Althaus, Catherine, Bridgman Peter, David Glyn, *The Australian Policy Handbook, 5<sup>th</sup> edition*, Allen and Unwin: Sydney 2012, <https://www.aspg.org.au/wp-content/uploads/2017/09/Aust-policy-handbook.pdf>

<sup>93</sup> Vos Ellen, Athanasiadou Natassa, Dohmen Laura, *EU Agencies and conflicts of interests*, European Parliament, Requested by the PETI committee. January 2000. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/621934/IPOL\\_STU\(2020\)621934\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/621934/IPOL_STU(2020)621934_EN.pdf)

<sup>94</sup> UNEP, *Environmental laws impeded by lack of enforcement, first-ever global assessment finds*. IISD, SDG Knowledge, A project by IISD. January 29, 2019. Available at: <https://sdg.iisd.org/news/environmental-laws-impeded-by-lack-of-enforcement-first-ever-global-assessment-finds/>

<sup>95</sup> United Nations. *Supra* note. 78.



the implementation of the granted rights<sup>96</sup>. This assessment should be carried by an autonomous institution.

After analyzing art. 2 of the ICESCR, it becomes evident that populist regimes have no grounds when arguing about the non-compliance with their international obligations. Regardless of the three approaches mentioned, there are solutions to address the issues. It is true that parties struggle with their internal issues, but the fundamental basis must be there. ESCR must be granted in accordance with the state's development, but coherent government actions are key in determining the extent to which these rights are guaranteed. To provide an illustrative example, that encompasses the themes discussed in this paper, let's consider a country facing a crisis upholding ESCR: Mexico.

### **Mexico, an untapped potential nation.**

Considering all that has been mentioned of regimes that provide various excuses to avoid granting ESCR and keep deteriorating the Environment with their actions, there is a flawless illustration, Mexico. This chapter will exemplify the three approaches from the previously mentioned art. 2 of the ICESCR within the Mexico's government's leader statements. By identifying the excuses employed by populist regimes towards ESCR, the following examples follow a predictable pattern, making them easily recognizable and justifiably dismissible. We will briefly analyze and compare these features will with what has been discussed in the present paper, as Mexico's leader populist frame has shown its usefulness for exploring the relationship between populism and environmental matters.

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<sup>96</sup> United Nations, *Office of the high commissioner for human rights, CESCR General Comment No.14: the right to the Highest Attainable Standard of Health (art.12)* Adopted at the 22<sup>nd</sup> Session of the Committee on ESCR, 11 August 2000, <https://www.refworld.org/pdfid/4538838d0.pdf>

Latin America, a region where populism and environment is related to extractivism, often defined as “*the pattern of accumulation based on the overexploitation of generally nonrenewable resources*”<sup>97</sup>. This economic model, promoted and legitimized by populist regimes under the mantle of social inclusion and economic welfare<sup>98</sup>. The situation is further aggravated in the region, due the extreme poverty, vulnerability, contrasts and according to Human Development Reports, caught in an endless low growth<sup>99</sup>. Populist regimes in Latin America are often criticized for the high levels of inequality and environmental devastation, which is intrinsically related to issues of corruption. According to Transparency International, in 2022 Mexico is ranks 126<sup>th</sup> place out of 180 nations, placing among Gabon, Papua New Guinea and Nigeria. This indicates a severe issue with corruption<sup>100</sup>. Additionally, Mexico stands at the 72<sup>th</sup> place among the most vulnerable country to climate change and other global challenges, as well in readiness and resilience<sup>101</sup>. This combination of corruption and vulnerability to CC represents a major challenge in ensuring a CHSE for the state’s population.

One major concern is that Mexico, according to some experts, would be an economic powerhouse if not for corruption and the diversion of resources. Corruption is estimated to cost to the GNP around 5% (53 Billion dollars)<sup>102</sup>. These loss of economic resources, instead of being channeled into the country’s economic welfare and paving the file for ESCR, are being used for practices that do not benefit the nation, but its contrary. Therefore, the overused speech of lack of resources cannot be used as an excuse for this populist regime, as we mentioned. There are ample

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<sup>97</sup> Svampa Maristella, *Commodities consensus: Neoextractivism and enclosure of the common in Latin America*, Sotuh Atlantic Quarterly 114 (1), 65-82. <http://maristellasvampa.net/wp-content/uploads/2019/12/Commodities-consensus.pdf>

<sup>98</sup> Solorio, I., Ortega, J., Romero, R. et al. *AMLO’s populism in Mexico and the framing of the extractivist agenda: The construction of the hegemony of the people without the indigenous voices*. *Z Vgl Polit Wiss* 15, 249–273 (2021). <https://doi.org/10.1007/s12286-021-00486-5>

<sup>99</sup> UNDP, *Regional Human Development Report 2021, Latin America and the Caribbean Region: Trapped: High Inequality and Low Growth in Latin America and the Caribbean*, New York, 01 January 2021, <https://hdr.undp.org/content/regional-human-development-report-2021-latin-america-and-caribbean-region>

<sup>100</sup> Transparency International. *Corruption Perceptions index*, 2023. Available at: <https://dashboards.sdqindex.org/map/indicators/corruption-perceptions-index>

<sup>101</sup> University of Notre Dame, *ND-GAIN Notre Dame Global Adaptation Initiative*. Notre Dame University research. Notre Dame, USA. 2023. Available at: <https://gain.nd.edu/our-work/country-index/rankings/>

<sup>102</sup> OECD, *Integrity Review of Mexico, Taking a stronger stance against corruption*, 2017, <https://www.oecd.org/corruption/ethics/mexico-integrity-review-highlights.pdf>

economic resources available, Mexico economy seems to be on a strong foot<sup>103</sup>. The real issue is the government's unwillingness to allocate them to critical matters, like environmental protection.

The current regime of Mexico, led by Andres Manuel Lopez Obrador (AMLO) falls under the populist umbrella<sup>104</sup>. Since it's electoral victory in 2018, the discourse and politics of the head of state had been conducted as another trite example of weak rhetoric and constant creation of antagonists. Social and environmental conflicts have multiplied in the country during last years, due the blameworthy actions the government have conducted<sup>105</sup>. The use of force, intimidation and repression are just a few bad practices the populist governments use, against those who try to oppose their hazardous actions. Mexico in particular stands out where this reprehensible practice is alarmingly prevalent. As it has earned the label of the "*Deadliest country for Environmental Activists*", a report from Global Witness found that 55 environmental and right activists were killed in 2021, most than any country worldwide<sup>106</sup>. The delicate situation was questioned by the international community, specifically the European Parliament. Nevertheless, the situation was handled as expected, the Mexican president replied to these concerns with a wrote a letter, qualifying European Legislators guilty of "corruption, lies and hypocrisy", condemning their "attack and opposition" against him, as everyone who doubts and evidences his regime, as follows:

*"Leave behind your meddling compulsion disguises as good intentions. You are not the world's government (...) next time inform yourselves (..) and do not forget we are no longer anyone's colony, Mexico is a free, independent, and sovereign country<sup>107</sup> "*

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<sup>103</sup> Zaga Daniel, Ortiz Alejandra, *Mexico economy outlook, 2023*. Deloitte Global Economics Research Center, 2023. Available at: <https://www2.deloitte.com/xe/en/insights/economy/americas/mexico-economic-outlook.html>

<sup>104</sup> Tetreault, Darcy. *The new extractivism in Mexico: Rent redistribution and resistance to mining and petroleum activities*. World Development. 2020. Available at: <https://doi.org/10.1016/j.worlddev.2019.104714>

<sup>105</sup> Solorio, *supra* note 94.

<sup>106</sup> Lopez Oscar, *Mexico Named Deadliest country for Environmental Activists*, The New York times, 29<sup>th</sup> September 2022, Available at: <https://www.nytimes.com/2022/09/29/world/americas/mexico-environmental-activists-killed.html>

<sup>107</sup> Rocha Antonio, *Mexican president hits back at European Parliament over deaths of journalists*, World, Americas, March 11, 2022. Available at: <https://www.aa.com.tr/en/americas/mexican-president-hits-back-at-european-parliament-over-deaths-of-journalists/2532468>

However this declaration is just another contradictory and double speech, due on one side the Union is being criticized and slandered. On the other hand, the government appears to agree when receiving financial aid (humanitarian above all) from the same entity that was pointed as “*disguising good intentions*”. This aid consists of an €11 million humanitarian aid for Central America and Mexico, helping to reinforce local capacities of vulnerable areas and insecurity. Besides, this is not the first time Mexico has accepted financial aid, due since 1994 the EU has allocated €322 million on this region for similar purposes<sup>108</sup>. It is highly worrying that environmental defenders and advocates are targeted as threats for the government, the message for those who want to defend and preserve the environment is clear<sup>109</sup>.

Regarding the protection of the environment, the government has been widely criticized for its failure. Moreover, has shown the incapability of coping with environmental matters effectively. Mexico seems to rely the future toward fossil fuels and not in renewable resources, gambling on oil refineries and setting aside the green energies. The government stance is encapsulated in statements like, “*Technological advancement will become a reality, we need more time*”<sup>110</sup>. Once again, the government’s approach seems to prioritize future possibilities over present action and investment in green technologies. Mexico, considered one of the best potential locations worldwide for solar energy generation, has witnessed its possible progress in solar energy hindered during this administration. This hindrance can be attributed to the president’s constant ridicule of policy experts and embrace of nationalistic tropes<sup>111</sup>. Rather than promoting and benefit from the use of renewable resources, the government announced that coal will continue as the main

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<sup>108</sup> Directorate General for European Civil Protection and humanitarian Aid Operations, *Central America and Mexico: EU reaffirms support with €11 million in humanitarian aid*, European commission, 15 February 2023, Available at: [https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/news/central-america-and-mexico-eu-reaffirms-support-eu11-million-humanitarian-aid-2023-02-15\\_en](https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/news/central-america-and-mexico-eu-reaffirms-support-eu11-million-humanitarian-aid-2023-02-15_en)

<sup>109</sup> Leyva Alejandra, Campuzano Margarita, *Mexico faces regressive policies in the defense and protection of environmental rights*, Global Witness, November 30, 2020. Available at: <https://www.globalwitness.org/en/blog/escazu-environmentaldefenders-cemda/>

<sup>110</sup> Lopez Oscar, *Mexico sees its energy future in fossil fuels, not renewables*, , The New York Times, 17 august 2022, <https://www.nytimes.com/2022/08/17/world/americas/mexico-president-renewable-energy.html>

<sup>111</sup> Parish Nathaniel, *Why is Mexico’s president so hostile to solar energy investment?* Forbes, May 23, 2023. Available at: <https://www.forbes.com/sites/nathanielparishflannery/2023/05/23/why-is-mexicos-president-so-hostile-to-solar-energy-investment/>

source of the country's power production<sup>112</sup>. This decision was made clear in the leader initial speech, addressing the desire for an energy reform<sup>113</sup>. This desire would involve the 7<sup>th</sup> historical ghg emissions producer<sup>114</sup>(PEMEX) and turned away renewable investment.

### 6.1 The Ecocide Train.

Contradicting the own rhetoric about the resource constraints and technological limitations of the state, there is a mega-project that is taking place in the southern region of Mexico. The dimensions are around 631.25 kilometers long and 40 meters width<sup>115</sup>. This \$15 billion train line through the heart of the Mayan Civilization is a controversial infrastructure project known as the *Mayan Train*. This project primarily promotes sustainable tourism, socioeconomic development, and the “prosperity” of indigenous communities.

In reality, far from preserving and respecting these vulnerable places, the project has affected them in numerous ways. For instance it has led to the degradation of the forest, damaging the cenotes, destruction of ancestral sites, has brought violence to the communities, among many other negative consequences . Additionally, the ecocide that has already caused is of an irreversible nature. Nevertheless, the project goes<sup>116</sup>.

This train was questioned due its irreversible damage already caused to the environment, and the legitimacy of his “*popular consultations*”, which according to the UN High commissioner on Human Rights didn't comply with international

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<sup>112</sup> Duran Paloma, *More Investment Allocated to Coal Mining, Mexico Business news*, March 8<sup>th</sup>, 2022. Available at: <https://mexicobusiness.news/mining/news/more-investment-allocated-coal-mining>

<sup>113</sup> Farmer Matt, *Mexico's fight against renewable energy: the story so far*. Power Technology, September 9, 2020. Available at: <https://www.power-technology.com/features/mexico-renewable-energy-fight-state-power-company-andres-manuel-lopez-obrador-pemex-cfe-cenace-legal-block-investment-greenpeace/?cf-view>

<sup>114</sup> Riley Tess, *Just 100 companies responsible for 71% of global emissions*, study says, *Guradin Sustainable business*, July 10, 2017. Available at: <https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change>

<sup>115</sup> Reuters, *Mexico's Mayan Train critically threatens ancient, pristine areas, scientists warn*. NBC News, 4<sup>th</sup> January 2023, Available at: <https://www.nbcnews.com/news/latino/mexicos-mayan-train-threat-ancient-areas-scientists-warn-rcna64212>

<sup>116</sup> Linares Albinson, Leon Valeria, Montiel Carmen, *Mexican environmentalists, Indigenous leaders denounce Mayan Train Project*, NBC Latino, May 11, 2022. Available at: <https://www.nbcnews.com/news/latino/mexican-environmentalists-indigenous-leaders-denounce-maya-train-proje-rcna28114>

standards<sup>117</sup>. This is contrary to the right to public information in a case concerning protection of environment<sup>118</sup>. One of the state's obligations is to realize a competent environmental impact assessment, which *de facto* was realized by the National Fund for Touristic Development, nevertheless, was not made available for the public<sup>119</sup>. This only served to "legitimize" the project and claim that institutions complied with their international obligations. Even on the project manifesto states that it aims to protect the environment from the mismeasured anthropogenic intervention, and the deforestation and trafficking of species<sup>120</sup>.

In reality, numerous environmental experts and institutions have warned the irreversible damage and possible disappearance of certain species, forests reserves, underground water networks, archeological structures and ecological hotspots caused by the Train. This extensive rail network cuts through the heart of the Mayan jungle<sup>121</sup>. But the mindset is clear, destroy the jungle than upset a few powerful hotel owners and investors. The Mexican head of state has dismissed the argument that the preservation of cultural artifacts is a reason to clock his train, stating:

*"It is no longer the destruction of the environment, but the destruction of archeological sites" he said, and smirked "They're predictable"*<sup>122</sup>.

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<sup>117</sup> U.N. Press Release, The Mexican Office of the United Nations High Commissioner on Human Rights, *El proceso de consulta indígena sobre el Tren Maya no ha cumplido con todos los estándares internacionales de derechos humanos en la materia*. December 19, 2019. Available at: <https://hchr.org.mx/comunicados/onu-dh-el-proceso-de-consulta-indigena-sobre-el-tren-maya-no-ha-cumplido-con-todos-los-estandares-internacionales-de-derechos-humanos-en-la-materia/>

<sup>118</sup> OAS, *Access to justice as a guarantee of ESCR. A review of the standards adopted by the Inter-American system of human rights*, Interamerican commission on human rights, 7 September 2007, Available at: <http://www.cidh.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf>

<sup>119</sup> FONATUR, *MANIFESTACIÓN DEL IMPACTO AMBIENTAL* cap. 1 pp. 33 (2020). Available at: <https://apps1.semarnat.gob.mx:8443/dgiraDocs/documentos/camp/resumenes/2020/04CA2020V0009.pdf>

<sup>120</sup> Green Jared, *Going off the rails on the Mayan train: How AMLO's Development project is on a fast track to multiple violations of Indigenous groups*, American University International Law Review, Volume 36, Issue 4, Article 3, 2021. Available at: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2073&context=auilr>

<sup>121</sup> Caballero Jimena, De la O Laura, *Effects of the Mayan Train over the Mayan Jungle*, Research Gate, March 2019, Available at: [https://www.researchgate.net/publication/332427337\\_Effects\\_of\\_the\\_Mayan\\_Train\\_over\\_the\\_Mayan\\_Jungle](https://www.researchgate.net/publication/332427337_Effects_of_the_Mayan_Train_over_the_Mayan_Jungle)

<sup>122</sup> Sieff Kevin, Leaming *Destroying Maya treasures to build a tourist train*, The Washington Post, December 9<sup>th</sup>, Available at: <https://www.washingtonpost.com/world/interactive/2022/mexico-tren-maya-destruction-archeology/>.



Despite the expertise and international concern, the government seems to be fully determined to continue with the labors. This raises question: *What role are NGOs and other environmental organizations playing in this matter? Is the judicial system addressing any complaints or issuing judgements on the matter? Is there a legal avenue to potentially stop this project? Is any of this legal?*

Regardless of multiple environmental advocates rising concerns about the harmful project, the train continues its construction unabated. Around 50 injunctions against the train have been filled since the works began, but none has been able to halt the project<sup>123</sup>. The project persists, driven by private interests and the unwavering will of the government. In a notable demonstration of rule of law, the judicial system suspended one of the railways sections of the train due the absence of authorized environmental impact statements, and several amparos were imposed, (a judicial action to protect individuals from the acts of the authorities that violates human rights<sup>124</sup>, the nature of these judgements shall be final and irrevocable.) But unfortunately, these regimes will always find ways for their loathe actions. The project has been granted an exemption, allowing it to proceed despite the amparos and environmental concerns. In July 2022, the government declared the project as “National Security” in order to avoid legal delays<sup>125</sup> and keep holding the façade of democratic state before the international community. Consequently, the decree does not violate any court orders, ensuring there are no legal problems can follow.

The measures were decided after a long wait for a judge to resolve the amparos, the Mexican president stressed; *“It has already been decided that that is a matter of national security and that we are not going to stop a work for the benefit of the people because of the interest of opposition groups and pseudo-environmentalist”*<sup>126</sup>. This decision leaves the environment defenseless, so is evident that the rule of law does

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<sup>123</sup> Bnamericas, *Mexico govt dodged 50 injunctions against Maya train*. 10 February 2023, <https://www.bnamericas.com/en/news/mexico-govt-dodged-50-injunctions-against-maya-train>

<sup>124</sup> Serna Maria, *Amparo*, Oxford constitutional Law, September 2016, <https://oxcon.oup.com/display/10.1093/law-mpeccol/law-mpeccol-e200>

<sup>125</sup> MND Staff, *Government declares Maya Train a National security project to avoid legal delays*, Mexico Daily, July 2022, Available at: <https://mexiconewsdaily.com/news/maya-train-a-national-security-project/>

<sup>126</sup> Duran Paloma, *Mayan Train’s construction Declared Matter of National Security*, Mexico Business News, 21 July 2022, <https://mexicobusiness.news/infrastructure/news/mayan-trains-construction-declared-matter-national-security>

not apply in the Mayan Train. There appears to be no effective recourse to stop the injurious project. This is where International instances are needed, as local instances and mechanisms may be insufficient to address the matter. The issue is that the train and ecocide continue, meanwhile an international instance can pronounce about it.

The “Mayan” train, in words of the remaining Mayan communities, is more a train, and has nothing Maya about it. The government uses this millenary culture to justify the imposition of “sustainable development”<sup>127</sup>. The catastrophic environmental impact that this irrational tourism industry will have on one of the richest biodiversity areas in the world<sup>128</sup>, such as: the aggravation on cenotes pollution (already 55%-70%), biological richness, tropical forests, fragmentation of ecosystems, interruption of biological corridors, endanger many flora and fauna species<sup>129</sup> among many other issues. The Mayan Train serves as a striking example of how populist regimes handle ESCR and environmental issues. Not to mention Civil and Political rights at stake. *The project is expected to inaugurate in December 2023.*

The situation in Mexico is alarming. The Climate Action Tracker classifies Mexico’s efforts in the environment as “Critically Insufficient”, its policies and action “Highly insufficient” and climate finance “Not assessed”. The actions carried out by this populist regime run contrary to environmental preservation and directly harm the environment and population. The situation does not seem to improve in the near future, as there are other two oil refineries on the make<sup>130</sup>, as mentioned before the subside on using fossil fuels, not taking proper measures to reduce plastic waste<sup>131</sup>,

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<sup>127</sup> Tornel Carlos, *Maya Train: more than a train, not Maya at all*. Latinoamerica21. May 24, 2022. Available at: <https://latinoamerica21.com/en/mayan-train-more-than-a-train-not-maya-at-all/>

<sup>128</sup> Soler Gerard, *Tren Maya, the Mexican megaproject threatening the ecosystems of the Yucatan Peninsula*, Equal times, March 18, 2022. Available at: <https://www.equaltimes.org/tren-maya-the-mexican-megaproject?lang=es>

<sup>129</sup> Esquivias Lorena, *The Mayan Train: Beyond developmental and socio-environmental narratives*, Wageningen University and Research, MSc Thesis International Development Studies, March 2021. Available at: <https://edepot.wur.nl/557299>

<sup>130</sup> Climate Action Tracker, *Mexico, Climate Action Tracker*, December 12, 2022. Available at: <https://climateactiontracker.org/countries/mexico/>

<sup>131</sup> Statista, *Level of concern about the environment in Mexico in 2019*, Statista, 2023. Available at: <https://www.statista.com/statistics/1063650/mexico-environmental-concerns-public-opinion/>

more than 50% of country's land is degraded and deforested<sup>132</sup>, air pollution and health issues continue to grow<sup>133</sup>, among others.

It is hard to imagine that with all these environmental and social issues, ESCR can develop and be supported by a government that evidently stands against all notions and precepts that can pave the way for ESCR. From the social aspect it would be ideal to claim these rights, specifically CHSER. However, as we mentioned, it is very dangerous and not permissible to claim these rights by freedom of speech or opinion. Also, in a legal way is very often hampered by the authorities, as they will always find an ill-mannered way to keep going their personal benefit and interests, as we saw with the Mayan train. The discourses of populist leaders is also hard to tackle as, is difficult to find the medium to do so. It seems a difficult time to claim ESCR in the Mexican territory.

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<sup>132</sup> Selibas Dimitri, *Mexican restoration dominated by non-environmental interests*, Mongabay, December 22, 2022. Available at: <https://news.mongabay.com/2022/12/mexican-restoration-dominated-by-non-environmental-interests/>

<sup>133</sup> Hoffman Bridget, *The Unequal Effects of Air pollution on Health and Income in Mexico City*, IDB Improving Lives, March 23, 2022. Available at: <https://blogs.iadb.org/ideas-matter/en/the-unequal-effects-of-air-pollution-on-health-and-income-in-mexico-city/>

## Conclusions

The aim of this paper is to provide a brief yet concise perspective on the duality between populism and the environment. Highlighting the contrast between scientific and doctrinal principles, compared to void statements from un-friendly ESCR regimes. We need to regard these major inconveniences as an opportunity for change, to listen to alternative political beliefs and reaffirm that the environmental protection is one of the fields that deserves the most of our attention and protection.

The denial of the impacts that climate change has caused are not anymore ground for debate. The conduct and actions mentioned in the article are reprehensible and completely inappropriate. Unfortunately, the cases we mentioned are just a fraction of what is occurring in the populism-environment field. The protection of the environment from these regimes is a significant and urgent issue that must be confronted and addressed properly.

Another alarming concern, is that during the present elaboration of this paper, related to the Mexico's Mayan Train case, many of the cited resources especially those in Spanish (due more information is addressed due the proximity) were not available anymore, or retired from the webpage, mainly newspapers and blogs. Transparency and freedom of speech are fundamental pillars for democratic societies. At IYNF we condemn all forms of oppression and censorship, recognizing that freedom of speech is a fundamental human right, allowing societies to develop and progress. It has been an essential feature to bring changes in society<sup>134</sup>, it means disagreement on matter that need to be disagreed on and fostering open dialogue. In the context of climate change, freedom of speech is crucial for identifying and addressing harmful practices and tackling environmental problems. In the present case, it is crucial to publish and signal the opposition of environmentalist and press towards the ecocide caused by the Mexican government. Therefore, freedom of speech is imperative in this regard.

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<sup>134</sup> Index on Censorship, Why is free speech important? Index Censorship, a voice for the prosecuted. April 13, 2016. Available at: <https://www.indexoncensorship.org/2016/04/free-speech-important/>

Regarding the international framework and environment, Conventions and international instruments are living instruments, as we mentioned; therefore they need to adapt to contemporary needs. The environment presents itself as an urgent-to-deal matter. There is an ethical and legal shift that humanity needs to attain, this is to recognize the intrinsic value of nature, which warrants protection in its own right. This recognition must be done not solely based on its utility to humans, but rather on a deontological basis. There is reason for hope when the protection of the environment concerns, more than 100 states have enacted legislation at domestic level that identifies and articulate right to a healthy environment, including procedural and substantive elements. Particularly encouraging and cheering those countries that were previously driven by political populism regime. Exemplary countries like Bhutan and his National Environmental Protection Act 2007, which includes the mentioned elements and states “*a person has the fundamental right to a safe and healthy environment with equal and corresponding duty to protect and promote the environmental well-being of the country*”<sup>135</sup>. Local level is always the first step when environmental protection concerns.

As the Committee on ESCR stated, there is an imperative need to integrate the green economy into the broader concept of sustainable development, which encompasses social development, together with economic growth and environmental protection, linked to ESCR<sup>136</sup>. When it comes to environmental protection there is not a single avenue to be taken. As we mentioned at the beginning, it requires a multidisciplinary approach that involves all sectors of society contributing to mitigate and solve the problem. Cooperation, persistence and education are main pillars that once combined, create a collective pursuing of well-being. As stated in the preamble on the Strasbourg Principles,

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<sup>135</sup> Bhutan National Environmental Protection Act, 2007, <https://policy.asiapacificenergy.org/sites/default/files/National%20Environment%20Protection%20Act%20of%20Bhutan%2C%202007%20%28EN%29.pdf>

<sup>136</sup> 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. May 18<sup>th</sup>, 2012, para. 3. Available at: <https://digitallibrary.un.org/record/732352>

*“Considering that every State and international institution, every person (...) has the duty to respect and take care of the environment by contributing with their best efforts to the conservation, protection and restoration of the integrity of the Earth’s climate and ecological systems (...)”<sup>137</sup>*

As Climate change will continue to produce serious issues and challenges for humankind, a transition towards sustainability becomes crucial. It is already a major challenge to overcome the damage caused since the industrial revolution, thus adding the disbelief that populist regimes and other entities express regarding the environment. The environment appears to be in constant threat and disadvantage, many entities and circumstances work together against its preservation. Even when it seems that measures and policies are making progress, they often encounter new obstacles or prove to be insufficient. Nevertheless, despite all adversities, the environment is something we all share as a common concern, it unites us as humankind. Therefore, the mindset of protecting and preserving it should continue to grow stronger with each generation.

Nature creates, increases, nourishes  
All things that are, and into which again  
Nature dissolves them when their time has come<sup>138</sup>.

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<sup>137</sup> The Strasbourg Principles of International Environmental Humans Rights Law, ElgarOnline, 30 Sept. 2022. Available at: <https://www.elgaronline.com/view/journals/jhre/13/0/article-p195.xml>

<sup>138</sup> Lucretius, *On the Nature of the Universe*, Oxford World’s Classics, ISBN 978-0-19-965514-7. 18. United Kingdom. First published by Clarendon Press 1997, Reissued 2008. P.4. 55.



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