

## **Consultation Response on the OTP's Draft Policy on Environmental Crimes**

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### **RE: Environmental Reparations & Collective Reparations**

The SOAS Environmental Clinic has been posed the specific question: How can addressing collective reparations through environmental measures—when environmental damage was either a means of harming humans or a consequence of harming them—ensure transformative reparations to the group or individuals affected? Are there any examples at the national level?

#### **A. Summary**

This paper explores how environmental and collective reparations can be integrated into the International Criminal Court's (ICC) framework through an ecocentric lens, addressing gaps in international law's treatment of environmental harm. While the ICC recognizes environmental destruction as a war crime, its human-centered approach excludes ecosystems and territories from reparative justice. By examining legal debates and case studies—including the legal personhood of rivers in New Zealand, India, and Bangladesh, as well as transformative justice initiatives in the Niger Delta, Peru, and Colombia—this paper argues that expanding victimhood to include the environment is essential to realising reparations as 'transformative'.

We propose that to achieve truly transformative reparations, legal pathways to amend ICC victimhood definitions, and enforcing corporate accountability through binding climate finance

mechanisms are necessary. Integrating principles from environmental restorative justice and the Rights of Nature movement, this paper reimagines the ICC's reparative framework to align with emerging global standards of environmental and collective justice, offering a more inclusive and sustainable approach to remedying both human and ecological harm.

## **B. Introduction**

Environmental harm is recognized as a war crime by the International Criminal Court (ICC) statute. However, the current legal framework primarily recognizes only humans as victims. This paper examines the potential for expanding reparations under international law to include the environment as a victim under the current ICC legal framework, drawing on legal precedents where nature or ecosystems are granted personhood. It further highlights transformative reparations, which aim for holistic justice by addressing environmental harm, systemic inequalities, and promoting cultural preservation, economic empowerment, and long-term restoration for both ecosystems and dependent communities.

## **C. Environmental Harm and Reparations**

The harm to the natural environment is categorised as a crime under Article 8 (2) (b) (iv) of the ICC Statute which prescribes "*Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated*".<sup>1</sup> Therefore, an attack must be both intentional, and with the knowledge that such attack would cause widespread, long term and severe damage to the natural environment. All three elements must be conjunctively proven. Furthermore, there is the defence to deliberate environmental damage of direct and concrete military advantage.

**Reparations and victims:** Article 79 of the Statute provides a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and their families.<sup>2</sup> The Court's Trust Fund

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<sup>1</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 8(2)(b)(iv).

<sup>2</sup> Ibid art 79.

provides victims with assistance where the harm is 'personal' to a natural or legal person which reflects the anthropocentric nature of international crime.<sup>3</sup>

The ICC's jurisprudence has clarified that a victim must be a natural person (that is a human being) or legal entity; that the harm can be material, physical, or psychological; experienced directly or indirectly, and personal.<sup>4</sup> Thus, non-human living entities or natural environments are currently excluded from exercising victims' rights of reparations and having access to legal representation.<sup>5</sup> Nevertheless, case law has introduced the possibility of encompassing the environment within the concept of 'indirect victim' (i.e. one who suffers due to the harm experienced by a direct victim) which is understood to include broader conceptions of family where culturally relevant.<sup>6</sup> Therefore, for the ICC to ensure greater protection for the environment, it is incumbent for the natural environment to be treated as a 'victim' on a par with a natural person. There are **two possible avenues to achieve this** under the Rome statute: *firstly*, the natural environment is given an independent standing and intrinsic value as per 'Earth jurisprudence' and the 'Rights of Nature movement'.<sup>7</sup> *Secondly*, nature and humans are interdependent and interconnected, thus any harm to the natural environment will adversely impact cultural, economic, social and spiritual wellbeing, including the rights of the indigenous communities and people residing in the natural environment. Transformative reparations in the form of environmental measures can then comprehensively address harm caused to the natural environment and rights and well-being of the people residing there.

In Part 1 we argue how the environment can be treated as a victim under ICC provisions from an ecocentric perspective and the rights of nature movement where the environment has been

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<sup>3</sup> Marina Lostal, 'De-Objectifying Animals: Could They Qualify as Victims before the International Criminal Court?' (2021) 19 Journal of International Criminal Justice 583-610.

<sup>4</sup> 'Judgment on the Appeals Against the "Decision Establishing the Principles and Procedures to be Applied to Reparations" of 7 August 2012 with Amended Order for Reparations (Annex A) and Public Annexes 1 and 2', Prosecutor v Lubanga Dyilo, ICC-01/04-01/06-3129-AnxA, 3 March 2015.

<sup>5</sup> Lostal M (2021) De-objectifying animals: Could they qualify as victims before the International Criminal Court? Journal of International Criminal Justice 19(3): 583-610.

<sup>6</sup> 'Judgment on the Appeals Against the "Decision Establishing the Principles and Procedures to be Applied to Reparations" of 7 August 2012 with Amended Order for Reparations (Annex A) and Public Annexes 1 and 2', Prosecutor v Lubanga Dyilo, ICC-01/04-01/06-3129-AnxA, 3 March 2015.

<sup>7</sup> Mihnea Tanasescu, *Understanding the Rights of Nature: A Critical Introduction* (Transcript Verlag 2022). See also Christopher D Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (Oxford University Press 2010).

given legal standing before the courts in several nations. In Part 2, we discuss the concept of transformative reparations. We argue that ecosystems can be considered as an integral part of the existence of indigenous communities as an example. These communities depend on nature for their livelihood, identity, and rights - cultural, spiritual and social. Therefore, transformative reparations are needed to protect the profound and spiritual connection of the indigenous people with nature.

**1. Environment as an independent victim under ICC:** To participate in ICC proceedings, an entity must be a 'victim' as outlined in the ICC's Rules of Procedure and Evidence (RPEs), namely Rule 85 and 86 which define victims as natural persons or organisations and institutions which are legal entities. The ICC does not yet include the environment as an independent entity. Arguably, however, Rule 85(b)'s inclusion of nonhumans within the ICC statute's framework allows for both the representation and involvement of certain non-human victims. As Houck points out, lawyers often represent entities such as ships, estates, and corporations, which are constructs "we have simply declared to be persons".<sup>8</sup> Legal representatives, guardians, and proxies are commonly used in various legal contexts, including cases involving crimes against legal entities,<sup>9</sup> as well as in situations where the primary victim is deceased, or when a litigation guardian is needed to represent a child or someone with a mental disability in court.<sup>10</sup>

Rule 89 also provides for an application to be filed on behalf of the victim who is a child or, disabled.<sup>11</sup> The ICC's RPEs make a specific provision for 'a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled' (RPE, Rule 89(3)). Furthermore, the ICC jurisprudence has demonstrated a pattern of granting the right of representation to the humans (child or disabled) and non-humans (organisations) through guardians or legal

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<sup>8</sup> Houck OA, 'Noah's Second Voyage: The Rights of Nature as Law' (2017) 31(1) *Tulane Environmental Law Journal* 1.

<sup>9</sup> Motupalli C (2018) Intergenerational justice, environmental law, and restorative justice. *Washington Journal of Environmental Law and Politics* 8(2): 333–36.

<sup>10</sup> Cruz Correia MC (2019) 'Voice of nature: The trial': Re-storying environmental justice. In: Biffi E and Pali B (eds) *Environmental Justice Restoring the Future: Towards a Restorative Environmental Justice Praxis*. Leuven: European Forum for Restorative Justice, pp. 92–95.

<sup>11</sup> Rules of Procedure and Evidence 2013, rule 89.

representatives. For example, in *The Prosecutor v. Thomas Lubanga Dyilo*,<sup>12</sup> legal representatives were appointed to act on behalf of child soldier victims, many of whom were represented through organizations rather than individually. This provision can arguably be extended by way of interpretation, to create a pathway for the environment to be recognised as a victim with the representation of a guardian, in compliance with the current legal framework of the ICC. Therefore, on a literal interpretation of Rule 85(b) of the ICC Rules of Procedure and Evidence, it is possible for the environment to be indirectly recognized as a victim with organizations and institutions advocating for its protection.<sup>13</sup> There are also recent trends where the environment could be considered as a victim through recognition of a legal personality of nature or its elements, as stated by Marina Lostal. This approach has gained traction in various legal systems, where rivers, forests, and other ecosystems have been granted legal standing, allowing them to be represented in court to seek redress for environmental destruction. This will be analysed further in the submission.

Proponents of ecocide law have envisioned the adjustment of such provisions to recognise the environment as a victim in its own right. Gray, for example, argued that if natural entities such as the environment or future generations were recognised as having their rights violated by ecocide, they could be represented by a 'next friend', such as a state, an institution mandated to make such claims, or a conservation organisation.<sup>14</sup> In Higgins' 2011 Mock Trial, some 4,000 birds were injured or killed in a fictional oil spill. These Birds, and the Earth as a whole were each represented by a spokesperson at the restorative justice conference.<sup>15</sup> The ICC can therefore treat the environment as a victim when: (i) another person can act with the consent or on behalf of the victim, which in this case, if interpreted broadly including the environment, would legitimise a representative on its behalf, and/or (ii) recognising ecocide and having institutions/organisations mandated to act on behalf of the environment. Stone's famous argument in favour of natural objects having legal rights to

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<sup>12</sup> *The Prosecutor v Thomas Lubanga Dyilo (Lubanga) Trial Chamber I, Decision Establishing the Principles and Procedures to be Applied to Reparations ICC-01/04-01/06-2904* (7 August 2012).

<sup>13</sup> Marina Lostal, 'The Environment and the ICC Legal Framework Concerning Victims' (2024) University of Essex School of Law.

<sup>14</sup> Gray MA (1996) The international crime of ecocide. *California Western International Law Journal* 26(2): 215–272. *Environmental Law and Management* 24(1): 17–19.

<sup>15</sup> Rawlinson K (2011) Mock trial finds Tar Sands spill 'bosses' guilty of ecocide. *The Independent*, 1 October, available at <<https://www.independent.co.uk/climate-change/news/mock-trial-finds-tar-sands-spill-bosses-guiltyofecocide-2363988.html>> (accessed 14 February 2025). Rivers L (2012) Shareholder return: A Nuremberg defence?

*Environmental Law and Management* 24(1): 17–19.

seek compensation and reparation for damage contemplated that their claims would be vocalised through appointed spokespersons.<sup>16</sup> As Bleby argues, the availability of a human ‘mouthpiece’ or legal proxy for nature is necessary to ensure that rights of nature are actionable as opposed to merely existing on paper.<sup>17</sup>

The specific recognition of the natural environment or entity as victim can also be found within environmental restorative justice practice which concerns ‘how to conceive of violence and harm against ecosystems and non-human beings’.<sup>18</sup> Inspired by Indigenous conceptions of justice, it envisages environmental conflicts being resolved via constructive interaction between offender, victim, and community.<sup>19</sup> Here, ‘victim’ is understood to encompass natural environment and entities,<sup>20</sup> which is a practice that is already gaining traction across multiple jurisdictions. One prominent example is in 2017 when the Whanganui river became the first river in the world to have legal personality after the Iwi engaged in sustained legal advocacy leading to the landmark enactment of the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*.<sup>21</sup> For other examples see the table below:

Country	Legal case	Framework	Recognition	Key Legal/Institutional Instruments	Impact & Challenges

<sup>16</sup> Stone C (1985) Should trees have standing? Revisited: How far will law and morals reach? A pluralist perspective. *Southern California Law Review* 59: 1–156.

<sup>17</sup> Bleby A (2020) Rights of nature as a response to the anthropocene. *University of Western Australia Law Review* 48(1): 33–67.

<sup>18</sup> Varona G (2021) Why an atmosphere of transhumanism undermines green restorative justice concepts and tenets. *The International Journal of Restorative Justice* 4(1): 41–59, 42.

<sup>19</sup> Forsyth M, Pali B and Tepper F (2022) Environmental restorative justice: An introduction and an invitation. In: Forsyth M, Pali B and Tepper F (eds) *The Palgrave Handbook of Environmental Restorative Justice*. Cham: Palgrave Macmillan, pp. 1–23, 6.

<sup>20</sup> Preston B (2011) The use of restorative justice for environmental crime. *Criminal Law Journal* 35(3): 136–153, 143 Brain explains that: the ‘biosphere and nonhuman biota have intrinsic value independent of their utilitarian or instrumental value for humans’ and therefore ought to be entitled to participate as victims in restorative justice processes.

<sup>21</sup> *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*: <<https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>> accessed by 18 February 2025.

New Zealand	Wanganui River (2017)	River as a legal person	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017	Strengthens Indigenous governance; effectiveness depends on Māori control over
Canada	Community litigation for river dewatering	Rivers represented collectively in legal proceedings	Court recognition of ecosystem rights	Establishes legal precedent but requires continued advocacy
India	Ganges & Yamuna Rivers (2017)	Rivers as living entities with legal personhood	High Court of Uttarakhand ruling	Implementation remains uncertain; later overturned by Supreme Court
Bangladesh	Turag River & all rivers (2019)	Rivers as legal persons	Supreme Court ruling extending rights to all rivers in Bangladesh	Enforcement remains a challenge due to pollution and industrial interests
Colombia	Awá Territory (JEP, 2018)	Territory as a victim	Jurisdicción Especial para la Paz (JEP) ruling	Expands transitional justice; shifts land from object to subject of rights
Colombia	Cxhab Wala Kile & Esperera Euja	Territory as a legal subject with rights	JEP recognition of environmental and socio-ecological harm	Highlights socio-ecological reparations but requires further enforcement

Albania	Vjosa River (2023)	River as a National Park	Judicial intervention & activism; Aarhus Convention participation rights	Structural environmental reparation through participatory justice
Nigeria	Niger Development Commission (NDDC)	Environment as a victim	African Charter on Human and Peoples' Rights (Article 24); 'Polluter Pays' principle	Attempts accountability but faces governance and enforcement issues
Brazil	Indigenous Lands Project (PPTAL) & Vale Mining Disasters (2015, 2019)	Indigenous territories and ecosystems as victims	Indigenous Lands Project (PPTAL); Vale Mining Agreements	Secures 27% of the Amazon as Indigenous territories; challenges include delays and legal barriers
Ecuador	Yasuní-ITT Initiative (2007)	Ecosystem as a legal entity (Rights of Nature)	Ecuadorian Constitution (2008); Yasuní-ITT Initiative	Highlights failure of voluntary efforts; exposes gap between climate rhetoric and action; calls for binding conservation agreements

The cases demonstrate a significant development within the broader Rights of Nature framework. A liberal interpretation of the *Ntaganda* Reparations Order<sup>22</sup> concerning rule 85(b) suggests that any part of nature that has been awarded legal personality and been harmed as a result of the commission of a crime within the jurisdiction of the Court, could qualify as a victim.<sup>23</sup>

In conclusion, the increasing recognition of the Rights of Nature across jurisdictions could lead to the direct recognition of the environment as a victim with independent standing. Indirectly, the

<sup>22</sup> Prosecutor v Ntaganda (Reparations Order) ICC-01/04-02/06-2659 (8 March 2021).

<sup>23</sup> Lostal (n 11) 4.



environment could be recognized as a victim through the representation of organizations based on a literal interpretation of Rule 85(b) of the ICC Rules of Procedure and Evidence.

## **2. Transformative reparations:**

For marginalised groups who suffer systemic violence, transformative reparations are essential for ‘overcoming structures of inequality and discrimination’.<sup>24</sup> Traditional reparation approaches have thus far proven insufficient, hence necessitating approaches that extend beyond mere restitution. To focus on narrow measures fails to situate environmental destruction in its broader context. As Rachel Killean states ‘this often involves environmental harm pre- and post- conflict, as well as structural inequalities which shape who is able to access and use natural resources’.<sup>25</sup> For targeted communities or marginalised groups, a return to the status quo would mean limited access to resources and lack of input into how the natural world is used and protected.<sup>26</sup> Transformative reparations have already been endorsed by the ICC,<sup>27</sup> although the concept has not yet been clarified. Therefore, there remains scope for transformative reparations to be afforded a broader acknowledgment that environmental harm includes a violation of the rights, livelihood, and health, spiritual, social and cultural practices of affected communities. Communities harmed by land degradation, pollution, or deforestation could require reparations in the form of land restoration projects, access to clean water, and support for sustainable development. Additionally, reparations could include safeguarding measures for ecosystems that have cultural, spiritual, and economic importance for the affected communities.

Transformative Reparations could also be realised through ‘assistance programmes’, namely, vocational training and income-generating activities for victims<sup>28</sup> which directly respond to material harm by restoring the environment and livelihoods of victims. In the ICC, the Trust Fund for Victims (TFV) includes an assistance mandate<sup>29</sup> such as in Northern Uganda, where the TFV

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<sup>24</sup> UN Office of the High Commissioner for Human Rights and UN Women, UN Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence (2014).

<sup>25</sup> Killean (n 2) 15.

<sup>26</sup> Maxine Burkett, ‘Imagining Future Reparations for Environmental Destruction’ (2019) 66 UCLA L Rev 386.

<sup>27</sup> The Prosecutor v Thomas Lubanga Dyilo (Lubanga) Trial Chamber I, Decision Establishing the Principles and Procedures to be Applied to Reparations ICC-01/04-01/06-2904 (7 August 2012) [222].

<sup>28</sup> Modalities previously awarded in the Lubanga and Katanga cases in the DRC situation. See TFV, 3 March 2015 Draft Implementation Plan; TFV, 24 March 2017 Draft Implementation Plan

<sup>29</sup> TFV, Report to the Assembly of State Parties on the Projects and Activities of the Board of Directors of the Trust

has supported training in bee-keeping, improved agricultural techniques and tree-planting.<sup>30</sup> Improving the quality and accessibility of such resources demonstrate how reparations can be truly transformative by reaching beyond the direct beneficiaries in post-conflict settings.<sup>31</sup> Weber argues that the potential scope of transformative reparations are training and support, education, community building, and sector reform, which both strengthens local capacity to rebuild in the aftermath of environmental damage but also respects the agency and dignity of victims so that they may empower themselves rather than rely on the state or institutions.<sup>32</sup> A transformative reparations programme therefore must be cognisant of the local context and focus on both the process and outcome for intended recipients. One major example is the Indigenous Lands Project (PPTAL), which successfully demarcated over 45.4 million hectares of land in the Amazon, securing 27% of the Brazilian Amazon as indigenous territories.<sup>33</sup> This project goes beyond simple land restitution; it integrates indigenous participation, technological advancements, and strategic communication to ensure long-term protection of ecosystems. By empowering indigenous groups to take ownership of land demarcation, PPTAL strengthens their role as environmental stewards, ensuring that reparations lead to sustainable environmental and cultural preservation.<sup>34</sup> PPTAL also developed new technical standards for land regularization, improving the quality of work and expanding geo-referenced databases to aid monitoring and mapping.

Transformative reparations also work hand in hand with institutional reform and rehabilitation policies such as harmonisation of corrective and distributive justice.<sup>35</sup> A necessary first step is therefore negotiation with the communities and their involvement in the decision making process

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Fund for Victims for the Period 1 July 2017 to 30 June 2018 Seventeenth Session, ICC-ASP/17/14, 5-12 December 2018.

<sup>30</sup> Rachel Killean, 'Imagining Future Reparations for Environmental Destruction' in E Palmer, S Harris Rimmer and E Bikundo (eds), *Futures of International Criminal Justice* (Routledge 2021) 8.

<sup>31</sup> Richard Milburn, 'Mainstreaming the Environment into Postwar Recovery: The Case for 'Ecological Development' (2012) 88(5) *International Affairs* (2012) 1088-1089.

<sup>32</sup> Sanne Weber, 'From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions' (2018) 12(1) *IJTJ* 88, 106.

<sup>33</sup> 'Brazil Rain Forest Pilot Program Success Story 2: Innovative Project Contributes to Regularizing Indigenous Lands in the Amazon' (*World Bank*) <<https://documents1.worldbank.org/curated/ar/977401468770132871/pdf/312210PAPER0EN120innovative0project.pdf>> accessed 28 February 2025.

<sup>34</sup> Ibid.

<sup>35</sup> Simeon Gready, The Case for Transformative Reparations: In Pursuit of Structural Socio-Economic Reform in Post-Conflict Societies, *Journal of Intervention and State Building* 2022, Vol. 16, No. 2, 182–201 <https://doi.org/10.1080/17502977.2020.1852833>, p. 197

in relation to rehabilitation for the reparations to be truly transformative.<sup>36</sup> A parallel is found in the human rights context in South Africa where the government in 2002 adopted a strict approach towards reparations in spite of receiving evidence from communities who endured 16 years of racial segregation before the Truth and Reconciliation Commission (TRC). The Khulumani members in South Africa<sup>37</sup> wanted transformative reparations as 'we do not want to be the recipients of services provided by the government, when we are capable of providing these services ourselves once the necessary resources have been allocated to us'.<sup>38</sup> A similar argument was pursued in Tunisia's Transitional Justice process where the participants purposefully rejected the label 'victim', given its passive role and preferred the term 'activists', fighting for their own justice.<sup>39</sup> Therefore, the key to transformative reparations is a broad and meaningful participation of marginalised groups in the reparation process.<sup>40</sup>

Transformative reparations can also stand as a form of transformative justice which resolves the socio-political and economic dimensions of environmental damage.<sup>41</sup> In the past, criminal tribunals and truth commissions have been operating under the concept of "transitional justice" to achieve accountability for perpetrators and redress for victims. These efforts have, however, primarily focused on the state and its related institutions, particularly in the Global South but not tackled the root causes.<sup>42</sup> Consequently, a more transformative approach to justice has been pursued in order to reshape pre-conflict structures to be more inclusive, equitable, and just but mostly victim-centered, in order to prioritize the socio-economic rights of victims and local

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<sup>36</sup> Ibid.

<sup>37</sup> Madlingozi, Tshepo. 2010. "On Transitional Justice Entrepreneurs and the Production of Victims." *Journal of Human Rights Practice* 2 (2): 208–228. P. 213

<sup>38</sup> Oupa Makhalemele, *Government's Exclusive Reparations Policy and the Impact of the 30,000 Financial Reparations on Survivors* (Centre for the Study of Violence and Reconciliation 2004).

<sup>39</sup> Andrieu, Kora, Ahmed Aloui, Wahid Ferchichi, Hager Ben Hamza, and Simon Robins. 2015. 'To Participate is to Have Hope ...': Victim Participation in Tunisia's Transitional Justice Process. Tunis: Kadem, Impunity Watch and CAHR, p. 5.

<sup>40</sup> Brianne McGonigle Leyh and Julie Fraser, 'Transformative Reparations: Changing the Game or More of the Same?' (2008) 8(1) *Netherlands Quarterly of Human Rights* 39-59.

<sup>41</sup> UN Women. "Progress of the World's Women 2011–2012: In Pursuit of Justice." Vol. New York: United Nations Entity for Gender Equality and the Empowerment of Women, 2011; W. Lambourne. "Transitional Justice and Peacebuilding after Mass Violence". *International Journal of Transitional Justice* 3 (1) 2009: 28-48.

<sup>42</sup> S. Robbins. "Whose Voices? Understanding Victims' Needs in Transition: Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations and the Transition in Nepal", *Journal of Human Rights Practice* 1 (2) 2009: 32031; see also P. Vinck and P. Pham. "Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC". *International Journal of Transitional Justice* 2 (3), 2008: 398411. See also L. Arbour. "Economic and Social Justice for Societies in Transition". Second Annual Transitional Justice Lecture hosted by the Center for Human Rights and Global Justice at New York University School of Law and the International Centre for Transitional Justice. New York University Law School, New York, 25 October 2006.

communities that occurred in Nepal and the Eastern Democratic Republic of Congo. If treated as a flexible, process-driven philosophy that encourages creative solutions to conflict, tackling issues such as accountability, loss, and healing, and the socio-economic consequences, transformative justice can provide 'transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion.'<sup>43</sup> Focusing on socioeconomic rights could further strengthen truth commissions' ability to tackle the underlying causes of conflict and improve their preventive role.<sup>44</sup>

Another but more complex aspect to making reparations transformative is to ensure that corporations are held accountable for environmental harm. Mining company Vale and its partners were ordered to pay billions in reparations after their dams collapsed, with allocations for environmental recovery and remediation. In 2023, Vale reached new agreements to compensate affected communities and restore damaged ecosystems.<sup>45</sup> Around 42 hectares are currently undergoing environmental recovery with the planting of 55,000 saplings in affected and legally protected areas, alongside collaboration with institutions like Viçosa Federal University to support restoration efforts, ensuring that reforestation only begins after tailings treatment and authorization.<sup>46</sup> Vale stated in a securities filing that the Renova Foundation had paid 34.7 billion reais in socioeconomic and environmental compensation by December 2023.<sup>47</sup> However, delays due to jurisdictional disputes, pandemic-related setbacks, and legal procedures have slowed progress, revealing systemic barriers to justice. Therefore, if transformative reparations are inclusive of land restitution, legal protections, corporate accountability, and sustainable environmental management, environmental measures can provide lasting justice for affected communities while ensuring ecological resilience for future generations.

### **Intersectionality:**

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<sup>43</sup> Barbara Rose Johnston and Holly M. Barker, 'Consequential Damages of Nuclear War: the Rongelap Report' (2008), 225-247.

<sup>44</sup> O. Thoms and J. Ron. "Do Human Rights Violations Cause Internal Conflict?" Human Rights Quarterly 29, 3 (2007): 674-705.

<sup>45</sup> Ibid.

<sup>46</sup> Vale, 'Brumadinho: Remediation Progresses and Dam Safety Is Reinforced' (Vale, 25 January 2023) <https://vale.com/w/brumadinho-remediation-progresses-and-dam-safety-is-reinforced> accessed 4th March 2025.

<sup>47</sup> Reuters, 'BHP and Vale Ordered to Pay \$15bn in Damages for 2015 Brazil Dam Collapse' The Guardian (25 January 2024) <https://www.theguardian.com/world/2024/jan/26/brazil-dam-collapse-mariana-bhp-vale-samarco15bn-damages-payout> accessed 4th March 2025.

The concept of transformative reparations is highlighted in the 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, which asserts that reparations should go beyond addressing the immediate consequences of crimes and violations. They must focus on tackling the political and structural inequalities that negatively affect women and girls' lives.<sup>48</sup> Special Rapporteur Rashida Manjoo emphasizes that reparations for women should challenge existing structural inequalities and could be "transformative" by supporting women in pursuit of "autonomy-enhancing life-projects."<sup>49</sup> A 2012 UN Women policy brief reinforces this view, stating that reparations programs must be both targeted and transformative-targeted in focusing on specific vulnerable groups, and transformative in addressing underlying inequalities.<sup>50</sup>

#### **D. Transformative thinking in International Law: Climate Change**

When looking at the conceptual underpinnings of the implementation of transformative reparations, sustainability and global environmental governance research<sup>51</sup> suggests that transformations are generally viewed as processes that unfold over time "phases" or "steps," describe "pathways" and "cycles" of activity, and involve forward- and backward-looking dynamics.<sup>52</sup> These processes challenge and reshape the existing status quo as a key aspect of transformation. Some scholars of socio-ecological resilience define "transformability" as the "capacity to create a fundamentally new system when ecological, economic, or social (including political) conditions make the current system unsustainable." Therefore, transformative reparations benefit from the engagement of multiple actors across various societal domains, thus highlighting the importance of both individual and collective agency, while also relying on collaboration with the state and social institutions.<sup>53</sup>

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<sup>48</sup> 'Nairobi Principles on Women and Girls' Right to a Remedy and Reparation,' <http://www.redress.org/downloads/publications/NairobiPrinciplesonWomenandGirls.pdf> (accessed 9 October 2015), 3H

<sup>49</sup> Rashida Manjoo, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences,' UN Doc. A/HRC/14/22 (23 April 2010) at paras. 31, 54.

<sup>50</sup> UN Women, 'A Window of Opportunity: Making Transitional Justice Work for Women,' October 2012, <http://www.unwomen.org/-/media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-MakingTransitional-Justice-Work-for-Women.pdf> (accessed 19 February 2025), 18.

<sup>51</sup> I. Scoones et al., "Transformations to Sustainability: Combining Structural, Systemic and Enabling Approaches", (2020) 42 *Current Opinion in Environmental Sustainability* 65.

<sup>52</sup> See, e.g., P. Olsson, C. Folke and T. Hahn, "Social-Ecological Transformation for Ecosystem Management: The Development of Adaptive Co-Management of a Wetland Landscape in Southern Sweden", (2004) 9 *Ecology and Society*, available at [www.ecologyandsociety.org/vol9/iss4/art2/](http://www.ecologyandsociety.org/vol9/iss4/art2/); D. Loorbach and J. Rotmans, "The Practice of Transition Management: Examples and Lessons from Distinct Cases", (2010) 42 *Futures* 237.

<sup>53</sup> E. O. Wright, *Envisioning Real Utopias* (2010).

## E. Environmental reparations:

The Niger Delta Development Commission (NDDC) exemplifies how environmental and collective reparations can facilitate transformative justice.<sup>54</sup> Established to address oil exploitation in the Niger Delta, the Commission aimed to repair environmental damage and tackle the root causes of harm, including structural inequalities and socio-economic deprivation.<sup>55</sup>

As a potential model for resource-rich developing nations grappling with environmental degradation,<sup>56</sup> the NDC operationalises principles like 'polluter pays' (See Case C-219/07 P, European Commission v Italy, 2009)<sup>57</sup> and domestic statutes in the UK and Germany. Additionally, the UN Guiding Principles on Business and Human Rights (UNGPs),<sup>58</sup> the Paris Agreement,<sup>59</sup> and various human rights instruments underscore a growing global consensus for state responsibility to address environmental harm. Whilst this could grow to become jus cogens, it is currently too inconsistently applied.

Despite its mandate, the NDDC has been hampered by significant challenges. Reports from the Nigerian Senate and independent audit findings have frequently cited corruption and politicised decision-making as major impediments to effective project delivery.<sup>60</sup> Moreover, the absence of a coordinated policy framework has led to fragmented planning and an implementation gap.

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<sup>54</sup> Niger Delta Development Commission (Establishment, etc.) Act 2000 (Nigeria) <[https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive\\_industries\\_database/nigeria/laws/NigerDelta%20Development%20Commission.pdf](https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/NigerDelta%20Development%20Commission.pdf)> accessed 18 February 2025.

<sup>55</sup> Sarah Tamunonengioforie Itamunoala, 'Plugging the Drain: Promoting Environmental Justice in the Niger Delta Through Judicial Independence' (LLM thesis, University of British Columbia 2020) <<https://open.library.ubc.ca/media/stream/pdf/24/1.0390008/3>> accessed 18 February 2025.

<sup>56</sup> United Nations, 'The 2030 Agenda for Sustainable Development' UN General Assembly, A/RES/70/1, 25 September 2015, para 9.

<sup>57</sup> European Commission v Italy (Case C-219/07 P) [2009] ECR I-1021.

<sup>58</sup> UN Guiding Principles on Business and Human Rights, UN Doc A/HRC/17/31 (2011).

<sup>59</sup> Paris Agreement (2015), UNFCCC, 21st Conference of the Parties (COP21), 12 December 2015, Art 2.

<sup>60</sup> Nigerian Senate, 'Report of the Senate Committee on Niger Delta Affairs: Addressing the Challenges of the Niger Delta Region' (2018) 12.

Projects in Bayelsa State saw only partial execution — leaving affected communities grappling with the long-term consequences of oil pollution.<sup>61</sup>

Entrenched issues such as weak governance, inadequate technical expertise, and insufficient community participation have undermined the potential for transformative change.<sup>62</sup> The Brass Refinery project in Bayelsa—where political rhetoric about economic revitalisation masked deep-seated inefficiencies and corruption—illustrates how transformative reparations can be compromised when institutional challenges remain unaddressed.<sup>63</sup> Reform can be provided in the form of an independent body with investigative and prosecutorial powers, investing also in comprehensive training, and embedding clearer implementation guidelines are essential steps.<sup>64</sup>

Examples of where transformative reparations have succeeded in providing positive outcomes for communities affected by environmental damage are cited below: (i) Peru's environmental reparations programmes provide a compelling example of how addressing collective reparations through environmental measures can yield transformative outcomes for communities harmed by environmental degradation.<sup>65</sup> The Marañón River has been ruled to possess inherent rights, including to exist, flow, sustain biodiversity, be preserved, and remain free from pollution.<sup>66</sup> This legal recognition mirrors the ecocentric approach we advocate for, where ecosystems are not passive consequences, but active subjects entitled to protection and reparation. This was the first time that Peru legally recognised the rights of nature. Additionally, the Nauta provincial court ruled that indigenous organisations and government agencies are “guardians, defenders and representatives of the Marañón River and its tributaries.”<sup>67</sup> This empowers entities with the authority to represent the environment in court and governmental decisions, enabling

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<sup>61</sup> Human Rights Watch, 'The Cost of Oil: The Struggle for Justice in the Niger Delta' (2019) 28.

<sup>62</sup> Ugochukwu I. Okeke, 'Governance and Environmental Reform in the Niger Delta: Challenges and Opportunities' (2021) 7(4) *Journal of Environmental Politics* 467.

<sup>63</sup> Adam A. Akpan, 'The Brass Refinery Project and Developmental Failures in the Niger Delta' (2017) 52(3) *Journal of African Business* 340.

<sup>64</sup> Abiola B. Alabi, 'The Role of Independent Oversight Bodies in Environmental Governance: Lessons from the Niger Delta' (2021) 59(6) *Environmental Law Review* 234.

<sup>65</sup> Felipe Rodríguez, 'Environmental Reparations in Latin America: The Case of Peru' (2020) 34(1) *Journal of Environmental Law and Policy* 125.

<sup>66</sup> The Constitutional Court of Peru, 'Sentencia N° 00022-2018-CC/TC' (2018) [Marañón River case].

<sup>67</sup> Nauta Provincial Court, 'Sentencia N° 07012-2015-0-1903-JR-CI-01' (2015) [Marañón River case].

indigenous organisations to block extractive activities, and seek judicial intervention for the cleanup of contamination.<sup>68</sup> The Marañón River rights is a step towards recognising the environment itself as a victim, thus moving beyond a human-centred perspective and emphasising the need to address environmental destruction as a direct form of victimisation. In the La Oroya case, the Inter-American Court of Human Rights ordered Peru to provide financial compensation and implement remedial measures for residents affected by severe industrial pollution.<sup>69</sup> In La Oroya, nearly all children exhibited dangerously high levels of lead and other heavy metals, highlighting the profound human cost of environmental neglect.<sup>70</sup> The environmental degradation in La Oroya exhibits how environmental harm and human harm are deeply interwoven. The Court mandated the cessation of further pollution, and comprehensive environmental remediation and specialised healthcare.<sup>71</sup> Notably, this was the Inter-American Court's first ruling linking industrial pollution to human rights, paving the way for justice in "sacrifice zones" overburdened with industrial contamination. Peru's commitment to transformative environmental reparations is also reinforced by statutes.<sup>72</sup> Peru's initiatives align with global movements. The National Strategy for the Restoration of Ecosystem and Degraded Forest Lands (ProREST) commits to restoring 3.2 million hectares of degraded land between 2021 and 2030 through natural reforestation, agroforestry, and environmentally sound technologies. The Bonn Challenge, launched in 2011 by the Government of Germany in partnership with the International Union for Conservation of Nature (IUCN),<sup>73</sup> is a global effort to restore 350 million hectares of deforested and degraded land by 2030, underscoring environmental restoration importance. Chilean lawyer Prieto Figelist says the Nauta court's decision "opens the door for practically all countries in Latin America to move towards the legal framework of the rights of nature," signalling a transformative shift in environmental governance that may facilitate collective reparations across the region.<sup>74</sup> By legally recognising the rights of nature, empowering indigenous guardians, and implementing robust remediation and restoration

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<sup>68</sup> Alberto Gómez, 'The Rights of Nature and Indigenous Leadership in Peru: Legal Recognition and Action' (2020) 16(3) Latin American Legal Review 191.

<sup>69</sup> Inter-American Court of Human Rights, 'La Oroya Case (Peru) v. The Republic of Peru' (2019) IACHR 5.

<sup>70</sup> Human Rights Watch, 'La Oroya: Peru's Hidden Toxic Legacy' (2017).

<sup>71</sup> Inter-American Court of Human Rights, 'La Oroya Case' (n 61) para 195.

<sup>72</sup> Law No 28611 (Environment Act 2005) regulates environmental rights, while Law No 30215 (2014) established the Mechanisms for Remuneration for Ecosystem Services (MERESE) programme aimed at offsetting carbon emissions and promoting ecosystem protection. This underpins national strategies that integrate ecological restoration with social justice, addressing physical and structural harm.

<sup>73</sup> International Union for Conservation of Nature (IUCN), 'The Bonn Challenge: Global Forest Restoration' (2020).

<sup>74</sup> Inside Climate News, 'Peru Court Rules Marañón River Has Legal Rights, a First for the Country' (20 March 2024) <https://insideclimatenews.org/news/20032024/peru-court-rules-maranon-river-legal-rights/> accessed 18 February 2025.



programmes through law, Peru not only addresses immediate environmental harms but the structural inequalities that have marginalized communities. This ensures that environmental reparations are truly transformative — redressing past harms while fostering sustainable development and resilience, and offering a valuable model for collective reparations in contexts where environmental damage has been used for or resulted in harming populations. International law does not explicitly confer rights of nature, yet its principles are reflected in instruments such as the Convention on Biological Diversity<sup>75</sup> and the Ramsar Convention on Wetlands.<sup>76</sup> Moreover, empowering indigenous organisations as guardians of natural resources aligns with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>77</sup> and regional instruments like the Escazú Agreement—which mandates public participation, access to environmental information, and protection for environmental defenders in Latin America and the Caribbean.<sup>78</sup>

(i) The Yasuní-ITT Initiative in Ecuador exemplifies how environmental measures can serve as collective reparations when environmental harm is both a means of harming humans and a consequence of that harm. This bold proposal aimed to protect Yasuní National Park—one of the most biodiverse regions on Earth—by leaving 846 million barrels of crude oil untapped beneath the Ishpingo-Tambococha-Tiputini (ITT) oil fields. In exchange, Ecuador sought \$3.6 billion in international financial contributions, representing half of the projected oil revenue,<sup>79</sup> to fund conservation efforts, protect Indigenous communities, and promote sustainable development through conservation and investment in renewable energy.<sup>80</sup>

The Yasuní-ITT Initiative failed due to its reliance on voluntary, unenforceable contributions, leaving Ecuador vulnerable to financial shortfalls. Wealthy nations offered rhetorical support but little funding, exposing the gap between climate pledges and action, with voluntary pledges

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<sup>75</sup> Convention on Biological Diversity, 'Convention on Biological Diversity, Article 8' (1992).

<sup>76</sup> Ramsar Convention Secretariat, 'Ramsar Convention on Wetlands, Article 2' (1971).

<sup>77</sup> United Nations, 'United Nations Declaration on the Rights of Indigenous Peoples' (2007).

<sup>78</sup> Escazú Agreement, 'Regional Agreement on Access to Information, Public Participation, and Access to Justice in Environmental Matters in Latin America and the Caribbean' (2018).

<sup>79</sup> Juan Falconi Puig, 'The World Failed Ecuador on Its Yasuní Initiative' (The Guardian, 19 September 2013) <<https://www.theguardian.com/global-development/poverty-matters/2013/sep/19/world-failed-ecuador-yasuniinitiative>> accessed 28 February 2025.

<sup>80</sup> 'Yasuní-ITT' (Climate Action) <[https://www.climateaction.org/directory/yasuni\\_itt?supplier=Yasuní-ITT](https://www.climateaction.org/directory/yasuni_itt?supplier=Yasuní-ITT)> accessed 28 February 2025.

amounting to a mere 0.37% of the target.<sup>81</sup> Economic pressures, with 32% of Ecuador's population in poverty, made oil extraction a tempting alternative. From a reparations perspective, the Yasuní Initiative attempted to secure financial contributions from wealthier nations as a form of climate accountability. However, because it relied on voluntary donations rather than legally enforceable obligations, it did not provide transformative reparations— long-term, structural change that addresses both historical and ongoing environmental harm.<sup>82</sup>

Transformative reparations would require legally binding climate finance mechanisms, ensuring that polluting states and corporations contribute to conservation efforts as a matter of legal duty, rather than discretionary aid. A potential alternative is embedding biodiversity conservation into enforceable trade agreements, creating tangible financial incentives for wealthier nations to support initiatives like Yasuní. Expanding carbon credit systems or implementing payment-for conservation models, akin to REDD+, could provide more sustainable funding mechanisms. A mandatory global carbon credit system would ensure that conservation nations receive financial support rather than relying on inconsistent voluntary pledges.<sup>83</sup> The establishment of a legally binding global conservation fund under the UNFCCC could ensure systematic contributions from high-emission states, making biodiversity protection a legal obligation rather than an optional gesture. Legal action could also serve as a pathway to securing climate finance. Some small island states and Latin American nations have already pursued climate justice through international courts.<sup>84</sup> Regional human rights courts, such as the Inter-American Court of Human Rights, could hold wealthier nations accountable for failing to support conservation efforts, if support is made legally binding. Recognizing climate destruction as a human rights violation could further strengthen legal frameworks for environmental protection. The failure of the Yasuní-ITT Initiative therefore highlights the need to recognize and enforce the Rights of Nature as a legal principle. Ecuador was the first country to enshrine these rights in its 2008

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<sup>81</sup> Juan Falconi Puig, 'The World Failed Ecuador on Its Yasuní Initiative' (The Guardian, 19 September 2013) <<https://www.theguardian.com/global-development/poverty-matters/2013/sep/19/world-failed-ecuador-yasuniinitiative>> accessed 28 February 2025.

<sup>82</sup> Associated Press, 'Yasuni: Ecuador Abandons Plan to Stave Off Amazon Drilling' (The Guardian, 16 August 2013) <<https://www.theguardian.com/world/2013/aug/16/ecuador-abandons-yasuni-amazon-drilling>> accessed 28 February 2025.

<sup>83</sup> 'The Proposal and Its Complexity' (Yasuní Global) <http://www.sussex.ac.uk/lifesci/pecklab/yasuniglobal/itt/prop> accessed 28 February 2025.

<sup>84</sup> Ruth Green, 'Climate crisis: Small Island States take landmark case to the ICJ' (International Bar Association, 21 January 2025) <https://www.ibanet.org/Small-Island-States-take-landmark-case-to-the-ICJ> accessed 13 March 2025.

Constitution, granting ecosystems legal personhood and the ability to be defended in court.<sup>85</sup> If the international community had embraced a similar legal approach, the Yasuní Initiative could have been framed as a legal obligation to uphold nature's rights, with environmental destruction recognized not just as an economic loss, but as a violation of fundamental rights—both for nature itself and for the Indigenous communities affected. This approach would align with climate justice litigation, where Ecuador and other affected nations could claim compensation for the environmental degradation that has disproportionately harmed vulnerable communities. Integrating the Rights of Nature into international law could create binding protections for biodiversity-rich areas, ensuring that financial and legal structures prioritize ecosystem preservation over extractive industries.

Ultimately, the failure of the Yasuní-ITT Initiative highlights why voluntary conservation efforts are insufficient for ensuring collective reparations. A truly transformative approach would require legally binding reparations that recognize environmental harm as both an ecological and human rights violation, integrating financial commitments, legal accountability, and Indigenous-led conservation efforts into a sustainable, justice-oriented framework.

## **F. Recommendations**

### Recognizing the Environment as an Independent Victim at the ICC

The ICC should formally recognize the environment as a direct victim, granting it legal standing alongside individuals and communities. This would align with Earth jurisprudence and the Rights of Nature movement, reinforcing the idea that ecosystems deserve legal protection. To implement this, Rules 85 and 89 of the ICC's Rules of Procedure and Evidence should be amended to include ecosystems as victims.<sup>86</sup> Additionally, legal guardianship provisions under Rule 89, currently applied to children and disabled individuals, should be extended to nature, allowing advocates to represent its interests in court.<sup>87</sup> Drawing on global precedents, such as the legal personhood granted to the Whanganui River in New Zealand and the Ganga and Yamuna Rivers in India, the ICC can adopt environmental restorative justice principles. Recognizing ecosystems as harmed parties would strengthen accountability and set a precedent for prosecuting environmental crimes as violations of fundamental rights.

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<sup>85</sup> 'Ecuador First to Grant Nature Constitutional Rights' (2008) 19(4) *Capitalism Nature Socialism* 131 <<https://www.tandfonline.com/doi/pdf/10.1080/10455750802575828>> accessed 28 February 2025.

<sup>86</sup> Cruz Correia MC (2019) n 10.

<sup>87</sup> Rules of Procedure and Evidence 2013, rule 89.

### Transformative Reparations for Environmental Harm

Reparations for environmental destruction must extend beyond financial compensation to include long-term ecological restoration and justice for affected communities. Recognizing environmental harm as a violation of cultural, economic, and social rights is crucial. Restoration initiatives should focus on land rehabilitation, access to clean water, and sustainable development projects tailored to local communities. Indigenous and affected populations should lead decision-making processes, ensuring reparative measures reflect their needs and cultural significance. A precedent for collective reparations exists in *The Prosecutor v. Thomas Lubanga Dyilo*, where reparations were designed to rebuild affected communities.<sup>88</sup> A similar approach should be taken in environmental cases, incorporating eco-sensitive legal frameworks that prioritize sustainability and long-term restoration.

### Collective Reparations Through Environmental Measures

Environmental harm often results from systemic injustices, requiring reparations that benefit both ecosystems and affected communities. The ICC should implement collective reparations that integrate ecosystem restoration with community-focused programs. Examples include Peru's Mechanisms for Remuneration for Ecosystem Services (MERESE), which funds conservation efforts, and specialized healthcare initiatives addressing pollution-related illnesses, as seen in La Oroya, Peru.<sup>89</sup> Additionally, Indigenous communities should be formally recognized as legal guardians of their natural resources, drawing from frameworks such as the UNDRIP,<sup>90</sup> and the Escazú Agreement.<sup>91</sup> This would ensure that reparative measures respect Indigenous governance structures and ecological knowledge.

### Holding Corporations Accountable and Limiting Industrial Interests

The ICC must reinforce the 'polluter pays' principle, holding corporations accountable for environmental harm.<sup>92</sup> Binding international agreements should mandate environmental due diligence and restoration efforts. Strict regulations should be implemented to protect ecologically sensitive regions, while corporate liability laws must be strengthened to ensure companies fund

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<sup>88</sup> ICC-01/04-01/06-2904 (7 August 2012).

<sup>89</sup> Law No 30215 (2014) (Peru) on the Mechanisms for Remuneration for Ecosystem Services (MERESE).

<sup>90</sup> United Nations, 'United Nations Declaration on the Rights of Indigenous Peoples' (2007).

<sup>91</sup> Regional Agreement on Access to Information, Public Participation, and Access to Justice in Environmental Matters in Latin America and the Caribbean (2018).

<sup>92</sup> 'The Stockholm Declaration' (1972) UN Doc A/CONF.48/14/Rev.1.

environmental reparations. Independent oversight bodies should also be established to prevent corporate lobbying from undermining environmental litigation.

### Indigenous and Community-Led Environmental Justice

Funding should be redirected to Indigenous-led conservation projects, ensuring that affected communities take the lead in shaping reparative measures. This approach would not only empower Indigenous groups but also enhance the effectiveness of environmental restoration efforts by leveraging their deep ecological knowledge.<sup>93</sup> Indigenous governance models should be prioritized in environmental justice efforts, recognizing the role Indigenous communities play in land stewardship. Strengthening legal protections for Indigenous land rights through collective land titling and participatory governance is essential.

### Creating International Environmental Reparations Mechanisms

A UN-led environmental reparations fund should be established to oversee the distribution of resources and ensure accountability in climate finance. This fund should shift climate finance from voluntary pledges to legally binding commitments. Moreover, courts and human rights bodies should formally recognize environmental destruction as a reparable harm. This would allow both ecosystems and affected communities to seek justice, ensuring that environmental crimes are addressed with the same gravity as other human rights violations.

### Addressing Systemic Failures

Environmental reparations cannot be effective without addressing systemic issues such as corruption, weak governance, lack of community participation and awareness. Independent investigative bodies with prosecutorial powers should be established to combat corruption in environmental governance. Additionally, investing in training programs for policymakers, legal professionals, and environmental experts would build capacity for the implementation of environmental reparations. Clear enforcement guidelines must also be developed to prevent fragmented planning and ensure effective project delivery.

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<sup>93</sup> Alberto Gómez, 'The Rights of Nature and Indigenous Leadership in Peru: Legal Recognition and Action' (2020) 16(3) Latin American Legal Review 191.

