

ISSN(O): 2582-6646

Journal of International Law and Comity

Volume 3 | Number 2

Centre for Peace, Justice and
International Law



Journal of International Law and Comity (JILC) is published by Centre for Peace, Justice and International Law - *In Memoriam Judge Christopher Weeramantry* (Weera Centre), Lucknow, India. It is a double peer-reviewed, open-access, biannual journal; welcoming submissions related to the pressing issues of international law that carry high human and non-human impact. For further details, email at:

weeracentre@gmail.com | weerajilc@gmail.com
URL: <https://weeracentre.org/issues/>

Weera Centre
C419, Mahanagar, Lucknow,
Uttar Pradesh, India – 226006.



COPYRIGHT POLICY

The copyright of the published works shall vest jointly with the contributor and Weera Centre. For activities that do not amount to monetization, the material can be shared as per respective territorial laws in force.

All contributors consent to indemnify the Weera Centre towards all claims, suits and consequences based on any claim of copyright infringement or unauthorized use arising as a result of their contribution being published in JILC.

Cite as:

[Volume : Number] J. Int'l Law & Com. [Page] [Year]

Journal of International Law and Comity
Volume 3 / Number 2
Winter 2022

ADVISORY BOARD

CSR Murthy

Formerly Professor, CIPOD, Jawaharlal Nehru University, New Delhi, India.

Daniel Rietiker

Senior Lawyer, European Court of Human Rights (Strasbourg) and
International Law Lecturer at the University of Lausanne, Switzerland.

Klaus Schlichtmann

Peace Activist, Environmentalist, Nobel Peace Prize Nominee and Former
Chairman, West-German World Federalists

Haider Ala Hamoudi

Professor and Vice Dean, School of Law, University of Pittsburgh, U.S.A.

Michael Fakhr

UN Special Rapporteur on the Right to Food and Associate Professor,
University of Oregon School of Law, U.S.A.

Obiora Chinedu Okafor

Professor, Osgoode Hall Law School, York University, Canada.

Paul Arnell

Reader in Law, Robert Gordon University, Aberdeen, U.K.

Ratna Kapur

Professor, Queen Mary University of London, U.K.

Selvi Ganesh

Associate Professor, Ambo University, Addis Ababa, Ethiopia.

Vasuki Nesiab

Professor, New York University - Gallatin, U.S.A.

Journal of International Law and Comity
Volume 3 / Number 2
Winter 2022

TEAM

EDITOR IN CHIEF

Sabana Reddy

EDITORIAL BOARD

Sheela Rai

Harisankar Sathyapalan

Deepa Kansra

Mohammad Umar

Moumita Mandal

Nitesh K. Upadhyay

Neshan Gunasekera

Thamil Venthana Ananthavinayagan

Anwar Sadat

Nizamuddin Siddiqui

Neba Chauban

Anirudha Choudhury

ASSISTANT EDITORS

Naasha F. Anklesaria

Matthew Shuck

ARTICLES

**Scope of African Union's Responsibility to Cooperate with UN
Regarding Peace and Security**

JARA SAMUEL TURA

1-32

**Domestic Implementation of International Law on Artistic
Freedom: A Study of Sri Lanka**

SACHINDRI PIYAHASIE DIAS

33-52

**Persons with Disabilities and their Right to Work: Bangladesh's
Failure to Respect International Human Rights Model of
Disability**

SK. IFTESHAM ISLAM

53-84

Environmental Rights in Action

HUSSEIN AHMED ALLAM

85-103

BOOK REVIEW

**Alva Myrdal: A Pioneer in Nuclear Disarmament. Edited By Peter
Wallensteen and Armend Bekaj. Cham:Springer**

PHANTITRA ARIEL PHUPHAPHANTAKARN

104-107

ENVIRONMENTAL RIGHTS IN ACTION

Hussein Ahmed Allam[†]

Abstract

Environmental rights belong to the set of economic, social, and cultural rights. This set of rights, in contrast to civil and political rights, is attributed with a different nature in terms of enforceability. This has ramifications for the justiciability of environmental rights before the court of law. A review of the case law of judicial and quasi-judicial forums from various jurisdictions shows that the claims of environmental rights are accepted and adjudicated. By and large, due to the programmatic character of environmental rights, the claims are basically raised on the behalf of a certain collective. But the case law also shows that individual claims are not totally declined. The remedies delivered to those harmed by anti-environment actions vary with regard to their timeframe and the degree of effect. Hard remedies target harmful activities and aim at affording immediate resolution; whereas, soft remedies transcends the immediate situation and respond to the communal harms triggered by environmental abuses. These remedies are put into effect either directly towards the affected environment or indirectly towards pushing for a green sustainable future.

Keywords: Justiciability, collective, resolution, sustainable future.

[†] LL.M. American University, Cairo, Egypt and Chief Judge of South Cairo Elementary Court, Egypt.

✉ husseinallam@aucegypt.edu

I. Introduction

The idea of environmental rights gives rise to issues related to economic, social, and cultural rights. Especially, aspects of justiciability and enforceability are critical in these areas. On the other hand, the justiciability and enforceability of civil and political rights are not contestable.¹ This distinction was reflected in the UN General Assembly's third committee deliberations on whether to gather the two sets of rights (civil and political rights and economic, social, and cultural rights) in a single covenant or to allocate a separate covenant for each group of rights. It was said that while civil and political rights can be implemented immediately through legislation, the economic, social, and cultural rights can have a progressive implementation depending on the available resources in individual nations.²

This led to the conclusion that civil and political rights are justiciable while economic, social, and cultural rights have programmatic nature.³ If we apply this viewpoint to the environmental rights, the actions that harm the environment would not be brought to courts as there is no obligation of immediate implementation. This is also visible in the decision of the European Committee on Social Rights ECSR in complaint No. 30/2005, *Marangopolous Foundation for Human Rights (MFHR) v Greece*. The ECSR states that the purpose of controlling pollution can be accomplished only progressively.⁴ On the contrary, there are several cases that underscore the justiciable

¹ Philip Alston & Gerard Quinn, The nature and scope of states parties' obligations under the International Covenant on Economic, Social and Cultural Rights, 9 Human Rights Quarterly 156 (1987).

² Daniel J Whelan, *Indivisible human rights* (2010).

³ Id.

⁴ H. Cullen, The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights, 9 Human Rights Law Review 61–93 (2009).

nature of environmental rights. However, still, the issue of effective remedy leads to the emergence of some concerns. For instance, whether there are remedial decisions that can be taken regarding the harm to environmental rights. If so, who has the power to bring the case before the forum? Does the claim have to be raised by the affected person or is it an issue of public interest so anyone can file the lawsuit? Further, what are the possible remedies that can be provided and how can they be delivered to those who are affected by the harmful actions?

This article argues that the study of case law in different jurisdictions reveals that environmental rights are justiciable rights. Nonetheless, raising the case before the court needs a sort of power, which can be of a community-centered nature or in an official form. Regarding the breach of environmental rights, two kinds of remedies can be understood: hard and soft remedies. Hard remedies, such as compensation, target the immediate removal of harm and the reparation of damages. Whereas soft remedies aim at achieving environmental improvements in the future, either directly by controlling and penalising potentially harmful activities, or, indirectly through programs and strategies that offer awareness regarding the change in environment and how humans treat it.

II. Justiciability of Environmental Rights

The aforementioned stance of the European Committee on Social Rights ECSR in the case of *Marangopolous Foundation for Human Rights (MFHR) .v Greece*, which rejected the justiciability of environmental rights,⁵ is not the prevalent stance. The practices of different forums in various jurisdictions did not deny environmental rights the feature of justiciability.

⁵ Supra, note 4.

Internationally, in the case of *A-Bloteh v. Golden Veroleum Liberia*, the Appeals Panel approved the decision taken by the Roundtable on Sustainable Palm Oil (RSPO) Complaints Panel, which held Golden Veroleum Liberia (GVL) responsible for transgressing significant procedural requirements related to obtaining farming and improving land in Liberia for the purpose of producing palm oil.⁶

At the Inter-American level, the Inter-American Court of Human Rights (IACtHR) in the case of *Indigenous Community Members of the Lhaka Honhat (Our Land) Association v. Argentina* adjudicated that the state of Argentina had violated its obligations under the American Convention on Human Rights, 1969. The decision found genesis in the infringement of the rights of indigenous people to collective property, a healthy environment, cultural personality, judicial protection, and adequate food and water.⁷

Further, the case of *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* (Communication No. 155/96) before the African Commission on Human and People's Rights puts a spotlight on the justiciability of environmental rights in the African jurisdiction. The commission stated in its ruling that the government had failed to- stop pollution and ecological degradation and oversee oil operations along with involving domestic communities in the decisions. It was held that these failures had caused damages to the right of the Ogoni people to health and their right to an adequate environment that serves developmental needs as

⁶ *A-Bloteh v. Golden Veroleum Liberia*, (2020). ESCR-Net - International Network for Economic, Social & Cultural Rights © ESCR-Net.

⁷ *Indigenous Community Members of the Lhaka Honhat (Our Land) Association vs. Argentina*, (2020). ESCR-Net - International Network for Economic, Social & Cultural Rights © ESCR-Net.

well as their right to dispose their wealth and natural resources freely.⁸

While the picture in the European context needs better clarity, the justiciability of environmental rights still finds an echo in the European case law. In the case of *López Ostra vs. Spain* (Application no. 16798/90) the European Court of Human Rights (ECHR), after referring the case from the European Commission on Human Rights, emphasized the accountability of the state of Spain for infringing the claimant's right to respect for the home and private life as grave pollution can affect the well-being of individuals and deprive them from enjoying their homes and damage their private and family lives. The court also mentions the state's failure in achieving an equilibrium between the public interests in developing the city's economy and enabling the claimant to enjoy her rights effectively.⁹

It can be thus averred that environmental rights are justiciable rights; also because ancillary claims are frequently accepted and addressed by various forums/tribunals in different geographical jurisdictions.

III. Who Can Claim an Environmental Right?

The review of the case law of various jurisdictions demonstrates the element of 'collectivity' as the required qualification to file the complaint of breaching environmental rights. To illustrate, the complaint has to be raised by the concerned local people backed by public movements or on their behalf.

⁸ Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96), (2002). ESCR-Net - International Network for Economic, Social & Cultural Rights © ESCR-Net.

⁹ *López Ostra vs. Spain* (Application no. 16798/90), (1994). ESCR-Net - International Network for Economic, Social & Cultural Rights © ESCR-Net.

The case of *Portillo Cáceres and Others v. Paraguay* before the United Nations Human Rights Committee was raised after the death of a farmer in Colonia Yeruticreadaen in the Curuguaty District of Paraguay. The death occurred because of nausea and fever owing to his intake of agrochemicals, which also affected Twenty-two other locals, who raised the case.¹⁰ Also, in the aforementioned case of *Indigenous Community Members of the Lhaka Honhat (Our Land) Association vs. Argentina*, the affected indigenous people sued the state of Argentina.¹¹

The cases can also be raised on behalf of the affected people, such as in the aforementioned case of *A-Bloteh v. Golden Veroleum Liberia*, which was raised by Green Advocates on behalf of the Indigenous Butaw Kru Peoples.¹² Similarly, the case of *Mapuche Paynemil and Kaxipayiñ Communities*, before the Inter-American Commission on Human Rights was filed by Neuquén Province's Official Defender of Minors. It claimed that the right of children to be protected by the state as minors and their rights related to health, a healthy environment, land ownership, and effective remedy were infringed.¹³

The collective power of the qualification to bring complaints related to environmental rights can reach the level of states. This promulgates the case into an international dispute, which transcends the domain of human rights, but still reflects environmental concerns. For instance, in the case of *Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, the International Court of Justice (ICJ) ruled that Nicaragua must compensate Costa Rica for the material damage including

¹⁰ *Portillo Cáceres and Others v. Paraguay*, CCPR/C/126/D/2751/2016, Communication 2751/2016, (2019). ESCR-Net - International Network for Economic, Social & Cultural Rights © ESCR-Net.

¹¹ *Supra*, note 7.

¹² *Supra*, note 6.

¹³ *Mapuche Paynemil and Kaxipayiñ Communities*, Case No. 12.010.(2013). ESCR-Net - International Network for Economic, Social & Cultural Rights.

environmental harm, which resulted from its illegal operations in Costa Rica's territory.¹⁴

Nevertheless, the case law also demonstrates that individuals still have some sort of power to raise the claim of environmental rights. In the case of *López Ostra v. Spain*, the European Court of Human Rights (ECHR) ruled that Spain is responsible for severe pollution which affected the claimant's right to respect the privacy of home and life.¹⁵

It can therefore be said that the qualification to bring environmental issues before judicial and quasi-judicial bodies varies from state to local communities. The petition can arise either through themselves or on their behalf. Nonetheless, this community based qualification comes without prejudice to the individual's agency to claim environmental rights in his/her own capacity.

IV. Remedies

The progressive nature of environmental rights and the collective qualification to raise related claims are reflected in the type of possible remedies for infringing these rights and the methods by which they can be produced for those who are affected and the whole society. The decisions and rulings of judicial and quasi-judicial institutions besides the reports of international institutions, show that these remedies oscillate between compensation and orders to stop the harmful practices and the programmatic and future-oriented schemes. The latter specifically look forward to eradicating the reminiscent effects of environmental abuses and developing a healthy environment and achieving sustainable goals for the future.

Hard Remedies

¹⁴ Activities Carried Out by Nicaragua in the Border Area (*Costa Rica v. Nicaragua*), ICJ Gen. List No. 150, 2018, (2019). ESCR-Net - International Network for Economic, Social & Cultural Rights.

¹⁵ Supra, note 9.

The hard remedies for violating environmental rights are directed towards ceasing harmful activities and compensating the victims besides repairing the effects caused by detrimental actions.

The African Commission on Human and People's Rights in the case of *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* referred to:

- i. the governmental failure in ceasing pollution,
- ii. the deterioration of the ecosystem,
- iii. supervising the oil processes, and
- iv. integrating the local communities in the decisions.¹⁶

It was emphasised that a breach in these areas infringed the rights of Ogoni people to health and an acceptable environment besides their right to dispose of their wealth and natural resources.¹⁷ Accordingly, the commission ordered to cease the attacks on Ogoni people and prosecute those liable for the violations besides compensating the victims.¹⁸ In a similar spirit, in the case of *López Ostra v. Spain*, the European Court of Human Rights ordered compensation to the plaintiff for the damages apart from the judicial costs.¹⁹ Also, in the case of *Indigenous Community Members of the Lhaka Honhat (Our Land) Association v. Argentina*, the Court delivered the remedy of ending the violations as it ordered ceasing any activity that impinges upon the right of people to property.²⁰

Hard remedies have prominent applications in the case of *Mapuche Paynemil and Kaxipayiñ Communities*, which was raised by Neuquén Province's Official Defender of Minors before the Inter-American Commission on Human Rights claiming the infringement

¹⁶ Supra, note 8.

¹⁷ Id.

¹⁸ Id.

¹⁹ Supra, note 9.

²⁰ Supra, note 7.

of the rights of children to protection as minors and their rights to land ownership, healthy environment, and efficacious remedy.²¹ The commission ordered the municipal authorities to provide a supply of emergency water immediately within two days and a permanent supply in forty five days along with initiating an investigation to treat any damages.²²

At the domestic level, a Dutch court ordered Royal Dutch Shell to reduce its emissions compared to 2019 by 45 percent.²³ Internationally, the ICJ in the case of *Costa Rica v. Nicaragua* adjudicated that Nicaragua must compensate Costa Rica for the material damage including environmental harm which occurred due to the illegal actions that Nicaragua committed in Costa Rica's territory.²⁴ Also, in the case of *A-Bloteh v. Golden Veroleum Liberia*, the Appeals Panel endorsed the Stop Order issued by the Complaints Panel.²⁵

To recap, the review of the practices of judicial and quasi-judicial bodies in various jurisdictions reveals that despite the programmatic nature of environmental rights, hard remedies can still be applied. These remedies take basically the forms of compensating the victims and short-term actions that aim at ceasing the violations and treating their damages, as well as handling the deteriorating situation.

Soft Remedies

²¹ Supra, note 13.

²² Id.

²³ Royal Dutch Shell moet CO2-uitstoot terugbrengen, Rechtspraak.nl (2021), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Nieuws/Paginas/Royal-Dutch-Shell-moet-CO2-uitstoot-terugbrengen.aspx> (last visited Dec 15, 2021).

²⁴ Supra, note 14.

²⁵ Supra, note 6.

The notion of soft remedies for breaching environmental rights transcends the mere compensation and reparation in tort law to different horizons, in which new techniques are put into effect through a long-term implementation. This is because of the programmatic nature of environmental rights and their prominence demonstrated in the widespread effects of environmental violation and consequently, the collective power to seek judicial protection against harmful actions. Accordingly, besides the hard remedies that are directed at the attacks and seek to achieve satisfactory restitution for the victims, the case law as follows introduces supplementary means that aim at delivering satisfactory remedies to the society and next generations. Through reviewing the case law as follows, these advanced forms of remedies can be classified mainly into two categories: direct remedies and indirect ones. Direct remedies target harmful activities and products and aim at controlling them in order to accomplish constant tangible results. Whereas, indirect remedies aim at altering the environmental view through far-reaching plans and programs in order to fulfill environmental development in the future, as well as avoid the previous violations.

A. Direct Soft Remedies

Direct soft remedies constitute a grey zone between hard remedies and indirect soft remedies. They approach hard remedies as they aim at producing tangible satisfactory outcomes for society. On the other hand, they are still under the umbrella of soft remedies as they are not confined to the narrow scope of dealing with specific harmful activities and compensating their victims, but they exceed that stage to various levels, in which sustained environmental treatment is addressed. In this context, Paris Agreement, 2015 stresses the necessity of reducing greenhouse emissions and implementing mitigating measures in order to face the problem of climate change as article 2(1)(a)(b) of the agreement says:

This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable

development and efforts to eradicate poverty, including by: (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production.

According to Article 4 (1)(2):

In order to achieve the long-term temperature goal ...Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

...Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

Additionally, the agreement highlights the significance of decreasing loss and damage that result from climate change as article 8(1) says:

Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.

These issues of reducing emissions, mitigating measures, loss and damage procedures are also emphasized in Glasgow Pact 2021. Following these guidelines, there are a lot of techniques deployed in those measures.

First, in its fight against climate change, the European Union presented a regulation to tax imports depending on the emissions of

greenhouse gases inextricable to manufacturing them.²⁶ Likewise, the UN Special Rapporteur on Human Rights and the Environment affirms the importance of taxation in order to decrease the consumption of unhealthy food.²⁷ Additionally, carbon pricing constitutes one of the mitigating procedures outlined in the Paris Agreement, as well as a direct remedy by dint of representing, according to the World Bank, a significant source of government revenue, which can be directed to other schemes, such as the mitigation of climate change besides economic purposes.²⁸

Second, while sanctioning products with regard to the rate of emission constitutes one side of the coin, rewarding environmentally friendly products comes as its other side. A number of World Trade Organization (WTO) members highlighted the plan of liberalizing environmental goods and services among other subjects, like facilitating trade and non-tariff restrictions.²⁹

Third, the notion of circular economy constitutes an important sort of direct remedies embraced by WTO members in the forms of recycling and remanufacturing,³⁰ as well as by the UN Special Rapporteur, who introduces circular economy for reutilizing and

²⁶ IISD's Hub, Policy Brief: EU Unveils Planned Carbon Tax on Imports Amid U.S., Japanese Concerns | SDG Knowledge Hub | IISD Sdg.iisd.org (2021), <https://sdg.iisd.org/commentary/policy-briefs/eu-unveils-planned-carbon-tax-on-imports-amid-u-s-japanese-concerns/> (last visited Dec 15, 2021).

²⁷ Report of the Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/76/179.

²⁸ IISD's Hub, Carbon Pricing and Markets Update: Initiatives Promote Carbon Pricing Approaches in Southern and Eastern Africa | News | SDG Knowledge Hub | IISD Sdg.iisd.org (2021), <https://sdg.iisd.org/news/carbon-pricing-and-markets-update-initiatives-promote-carbon-pricing-approaches-in-southern-and-eastern-africa/> (last visited Dec 15, 2021).

²⁹ IISD's Hub, Policy Brief: WTO Members Assess MC12 Options for Trade, Environmental Sustainability Work | SDG Knowledge Hub | IISD Sdg.iisd.org (2021), <https://sdg.iisd.org/commentary/policy-briefs/wto-members-assess-mc12-options-for-trade-environmental-sustainability-work/> (last visited Dec 15, 2021).

³⁰ *Supra* note 25.

recycling water and wastewater and reformulating goods and operations to terminate water pollution.³¹

Fourth, article 6 (2) of Paris Agreement says:

Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency.

In this regard, Japan has initiated its project of the Joint Crediting Mechanism (JCM). While this project belongs to indirect soft remedies as it looks forward to fulfilling net zero emissions by 2050 according to the Japanese Prime Minister, it still has direct and immediate implications.³² There is a requirement of assisting other countries with decarbonizing technologies, goods, services, infrastructure and systems in order to cut down their emissions.³³ The project is estimated to accomplish a cumulative decrease in emissions in Mongolia by 2030 of roughly 157,094 tonnes of Carbon dioxide.³⁴

The NEFCO-Peru pilot project is another scheme that shares the spirit with Article 6 of the Paris Agreement. Execution is done by collaboration between Peru and another country to decrease

³¹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/HRC/46/28.

³² IISD's Hub, Policy Brief: Advancing the SDGs and Accelerating Climate Action Through the Joint Crediting Mechanism | SDG Knowledge Hub | IISD Sdg.iisd.org (2021), <https://sdg.iisd.org/commentary/policy-briefs/advancing-the-sdgs-and-accelerating-climate-action-through-the-joint-crediting-mechanism/> (last visited Dec 15, 2021).

³³ Id.

³⁴ Id.

emissions in the solid waste sector.³⁵ It aims to enable Peru to raise its waste recovery and decrease the emissions of the waste sector in parallel with decreasing air pollution, constricting the spread of disease, and reducing water and soil contamination.³⁶

Lastly, in the schema of direct remedies, the 1997 Kyoto Protocol introduces three mechanisms to aid countries to accomplish their obligations of reducing emissions. First, is emissions trading, which allows nations to sell the emissions permitted to them according to the protocol but not used to countries that exceed their limits.³⁷ Second, the Clean Development Mechanism (CDM) permits nations that seek to decrease emissions according to the protocol to execute mitigation projects in developing countries.³⁸ Third, Joint Implementation, which allows countries to perform green projects in other developed countries in order to generate emission reduction units.³⁹

To sum up, direct soft remedies seek to strike a balance between introducing satisfactory results for the society and paving the way for sustainable environmental development. This can be fulfilled through several instruments such as taxing products depending on the rate of emissions that accompany their manufacture, carbon pricing, emissions trading, and circular economy. Additionally, direct remedies are introduced through initiatives, like the Japanese JCM project and the NEFCO-Peru pilot project.

³⁵ IISD's Hub, Policy Brief: Delivering Climate Ambition Through Market Mechanisms: Capitalizing on Article 6 Piloting Activities | SDG Knowledge Hub | IISD Sdg.iisd.org (2021), <https://sdg.iisd.org/commentary/policy-briefs/delivering-climate-ambition-through-market-mechanisms-capitalizing-on-article-6-piloting-activities/> (last visited Dec 16, 2021).

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

B. Indirect Remedies:

Indirect soft remedies are expected to complement hard remedies and direct soft remedies by avoiding harmful environmental activities and sustaining environmental development. This section reproduces the related provisions in the Paris Agreement and then sheds light on some aspects of indirect remedies.

Article 7:

2. ... taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.

5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems,...

6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

Article 9:

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.

9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

Article 10:

6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation...

Several thematic approaches can be identified in the context of indirect remedies. As they are expansive and interconnected, this part addresses some of them.

International Cooperation

As discussed before, the Paris Agreement stresses the significance of international cooperation in facing climate change and puts a responsibility on developed countries and international financial institutions to support developing countries in many fields related to climate change. Additionally, the UN Special Rapporteur highlights the necessity of providing unprecedented levels of financial aid to least-developed states and small island developing countries in order to accomplish the purposes of the Paris Agreement.⁴⁰ Likewise, the UN Human Rights Council referred to the significance of international cooperation in the context of the human right to a clean,

⁴⁰ Report of the Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/74/161.

healthy and sustainable environment.⁴¹ This shows the role of international solidarity in handling environmental issues, which reflects a graduated dimension of environmental rights and emphasizes the importance of far-reaching schemes as indirect remedies that address the future of the planet.

Rights of the Indigenous People

As the aforementioned practices of judicial and quasi-judicial bodies show, indigenous communities belong to the most vulnerable categories to environmental violations. Hence, the Paris Agreement emphasizes the necessity of addressing the needs of those communities. The UN Special Rapporteur specifies the significance of access to information and public participation in decision-making, and, enacting laws that require the consent of indigenous people before conducting projects or schemes that may harm their right to water.⁴² Furthermore, the UN Human Rights Council affirms that equality and non-discrimination entail recognizing the right to development and the quality of life of indigenous people and local communities.⁴³ Consequently, considering the rights of indigenous people would be an effective instrument that may well perform a preventive role in order to avoid environmental violations and disputes in the future.

Addressing Human Rights

The UN Human Rights Council emphasizes the universality, interdependence, indivisibility and interrelation between human rights.⁴⁴ This is reflected in developing other human rights in the

⁴¹ Resolution 48/13 adopted by the Human Rights Council on 8 October 2021 on the human right to a clean, healthy and sustainable environment.

⁴² *Supra*, note 31.

⁴³ Resolution 46/7 adopted by the Human Rights Council on 23 March 2021 on human rights and the environment.

⁴⁴ *Supra* note 41.

context of addressing environmental remedies, which classifies these remedies as indirect soft remedies, but they also may serve direct objectives.

The aforementioned JCM project aims to afford employment opportunities and open the door for the participation of women,⁴⁵ which addresses both the right to work and women's rights in parallel with environmental rights. In the same vein, the UN Human Rights Council underlines the rights of children to a protected, hygienic, healthy and sustainable environment, and their right to protection against exposure to pollution, hazardous substances, climate change, waste, and the loss of biodiversity, as well as their right to environmental information and awareness.⁴⁶

Other Approaches

The UN Special Rapporteur highlights different initiatives and techniques in addressing environmental rights. For instance, there is climate-smart agriculture that uses suitable crops for heat, drought, salinity, pests and disease.

Additionally, legislations play a crucial role in many areas, such as mitigating water scarcity, decreasing the use of pesticides, fertilizers and antibiotics, and protecting biological diversity.⁴⁷ Furthermore, some legal experts propose the international crime of *ecocide* as a solution to criminalize environmental breaches and protect

⁴⁵ *Supra*, note 32.

⁴⁶ Resolution 45/30 adopted by the Human Rights Council on 7 October 2020 on rights of the child: realizing the rights of the child through a healthy environment.

⁴⁷ Report of the Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/76/179.

environmental rights in the framework of international criminal law.⁴⁸

V. Conclusion

The case law of different judicial and quasi-judicial institutions in different jurisdictions affirms the justiciability of environmental rights despite their programmatic nature. However, this programmatic nature manifests itself in the collective threshold required to claim judicial protection despite sparse cases in which the individual claim is up to the judicial standards of raising the claim.

The possible remedies that can be produced in the adjudicated cases vary regarding their target, effects and timeframe. The review of the case law and the practices of various actors on the international plane reveals that while the character of environmental rights does not exclude the possibility of seeking hard remedies in the form of compensation, stop order and reparation, the progressive nature is prominently present in the form of soft remedies. As environmental violations have communal harms, there are different levels of remedies. These remedies seek to fulfill either direct satisfactory outcomes for the affected society, such as taxing the harmful activities, carbon pricing, and implementing green projects, or, envisions accomplishing future objectives of raising the environmental sensibility and avoiding the violations of indirect remedies like- international cooperation, recognizing the role of indigenous people and paying attention to human rights in general.

⁴⁸ An International Crime of Ecocide: The Proposal, Future Opportunities, and Challenges | ASIL, Asil.org (2021), <https://www.asil.org/international-crime-ecocide-proposal-future-opportunities-and-challenges> (last visited Dec 17, 2021).