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THE ROLE OF LAW AND THE TRIPARTITE APPROACH TO CLIMATE JUSTICE: LESSONS FOR NIGERIA FROM CANADA

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Climate justice has emerged as a crucial framework for evaluating sustainable climate action, emphasising inclusive governance, fair distribution of climate benefits and burdens, and access to remedies for vulnerable populations. Central to this discourse is the role of law in shaping equitable climate outcomes. This paper critically examines how legal systems can either enable or obstruct climate justice, particularly through the tripartite framework of recognition, distribution, and reparation. Using Nigeria as a case study, and drawing comparative insights from Canada an advanced jurisdiction, this study assesses the extent to which national laws reflect climate justice principles. The paper reveals significant gaps in Nigeria's climate change legal framework, including weak enforcement of environmental laws, institutional fragmentation, exclusionary governance provisions, and constitutional ouster clauses that undermine public interest litigation. Notable legislations such as the Climate Change Act 2021, the Petroleum Industry Act (PIA) 2021, the NESREA Act (2018 as amended), and the 1999 Constitution (as amended) fall short in ensuring inclusive, accountable, and just climate governance. The study proposes constitutional amendments to recognise the right to a clean, healthy and safe environment, and indigenous rights with state obligations; removal of Section 6 (6) (c) of the 1999 Constitution (as amended) to facilitate climate litigation, and give more impetus to the provisions of section 34 of the Climate Change Act 2021; structural changes to include indigenous representation in climate decision-making; adoption of carbon tax rebate systems to support vulnerable populations; and legal mechanisms to prioritise access to climate finance and adaptation support. It further calls for expanding NESREA's jurisdiction to the oil and gas sector and reorienting the Host Community Development Trust under the PIA to align with climate justice goals. By aligning Nigeria's climate governance with international best practices, these reforms aim to achieve climate justice in law and practice, ensuring fair representation, equitable distribution of resources for efficient adaptation and mitigation, and access to remedy for those most affected by climate change.

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1. INTRODUCTION

Climate change poses severe threats to individuals who are dependent on their natural environment and agriculture for survival.[1] These people, who often constitute the poor and rural dwellers in developed and developing countries, suffer disproportionately and are more vulnerable, despite their nominal contributions to greenhouse gases (GHG) emissions.[2] In spite of abundance of vast natural resources within these communities, dwellers seem not to benefit from these natural resources for their development, or for an improved standard of living and existence due to climate change impacts and practices that further threaten their environment.[3] In addition, because they often lack access to information, rarely participate in decision-making or have the requisite capacity to seek legal redress, breach of their environmental rights or climate obligations continues.[4] More so, they may be incapacitated to handle the climate threats affecting their lives and health due to long years of marginalisation, infrastructure deficit, poverty and systemic exclusion. These conditions describe the state of rural communities in oil rich Niger-Delta of Nigeria, and the Alberta

[1] The United Nations Environmental Programme (UNEP), Adaptation Report 2018 defines vulnerability as "the propensity or predisposition to be adversely affected by climate impacts." See UNEP: The Adaptation Gap Report (Nairobi, Kenya: United Nations Environmental Programme, 2018) vii [UNEP Adaptation Report]; IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, CB, VR Barros, DJ Dokken, KJ Mach, MD Mastrandrea, TE Bilir, M Chatterjee, KL Ebi, YO Estrada, RC Genova, B Girma, ES Kissel, AN Levy, S MacCracken, PR Mastrandrea, and LL White (eds.)] (Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press, 2014) at 618 [IPCC 2014].

[2] D Monsma, 'Equal Rights, Governance and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility' (2006) 33 Ecology Law Quarterly 443 at 489; Lindsay F Wiley, 'Healthy Planet, Healthy People: Integrating Global Health into the International Response to Climate Change' (2009) 24 J. Envtl. L &Litig 206.

[3] JS Dryzek, RB Norgaard and David Schlosberg, Oxford Handbook of Climate Change and Society (Oxford: Oxford University Press, 2011) 9. Negative effects include land grabs for REDD+ projects; D.S. Olawuyi, "Advancing Climate Justice in National Climate Actions: The Promise and Limitations of the United Nations Human Rights-Based Approach" in RS Abate (ed), Climate Justice: Case Studies in Global and Regional Governance Challenges (Washington, D.C.: Environmental Law Institute, 2016) 17.

[4] IPCC 2014.

region of Canada who have been disconnected from utilising their environment and natural resources due to long years of oil and gas related pollution and the effects of climate change. These areas are characterised by unsafe drinking water, poor health care, and infrastructural deficit, oil extraction activities which impinge on their health, culture, and means of livelihood, food security, environment, and biological habitat,[5] thus making them highly vulnerable to climate change.

Climate justice as an offshoot of environmental justice seeks to ensure that everyone enjoys the right to live in a safe and healthy environment, and that decisions on climate change and climate action do not lead to negative human rights impacts, cause new vulnerabilities or worsen existing ones.[6] Climate justices, as a human-centered approach to development calls for legal systems to ensure that the burdens and benefits of climate change are shared equitably with vulnerable groups are been prioritised and protected.[7] It also requires that substantive and procedural measures are put in place to enable people who suffer climate injustices to seek legal redress.[8] The tripartite approach to climate justice offers a normative, yet practical approach to attaining climate justice through three essential pillars: recognition, distribution and reparations. The recognition pillar of climate justice emphasises the need to acknowledge and consider certain groups in climate change discussions and climate action according to what makes them different, for instance their location, indigenous land rights, gender, disability and any things that makes them special and particularly vulnerable to climate change. Distribution focuses on fair distribution of the benefits and burdens of climate change for all parties in the climate change struggle. Reparation seeks to ensure that communities affected by climate change are remedied through climate adaptation and mitigation

[5] EE Nkwocha, 'Water Supply Deficiency and Implications for Rural Development in the Niger-Delta Region of Nigeria' (2009) 90(3) Social Indicators Research 409-418; Norwegian Human Rights Institution, 'Effects of Climate Change for the Sami People' <6. Effects of climate change for the Sámi people - NIM> accessed March 23, 2025.

[6] Mary Robinson Foundation, *Principles of Climate Justice* (2018) <Mary Robinson Foundation – Climate Justice | Principles of Climate Justice> accessed November 26 2024.

[7] *Ibid.*

[8] International Bar Association, 'Achieving Justice and Human Rights in an Era of Climate Disruption' (2014) https://biotech.law.lsu.edu/blog/Climate-Change-Justice-and-Human-Rights-Report-FULL.pdf accessed 16 April 2025.

projects, without such projects leading to human right breaches, and where breaches occur, legal redress should follow. Together, these three pillars of climate justice reinforce each other and provide a three layered test for attaining climate justice. Using the tripartite approach to climate justice as a guide, this paper conducts a comparative analysis on the legal framework for attaining climate justice in Nigeria, and Canada with the aim of enhancing practical policy guidance for Nigeria's climate justice reforms.

The paper adopts the doctrinal legal research methodology. The doctrinal legal research allows the researcher to examine and analyse primary and secondary sources of law on environment, climate change, human rights, and emission control laws generally in Nigeria and Canada which are consideredthrough the deductive, inductive and analogous reasoning techniques, based purely on logical form and legal reasoning with the aim of deducing global best practices in attaining climate justice. Some of these laws include, Climate Change Act (Nigeria) 2021, Net-Zero Emissions Accountability Act 2019, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Constitution Act of Canada 1867, 1982, the Environmental Impact Assessment Act 1992, the Impact Assessment Act 2019, the Canadian Environmental Protection Act 1999, amongst others.

This paper is structured into four sections with this introduction being the first. The second section gives a background of the two jurisdictions in comparison and the rational for their comparison. The third section discusses the Tripartite Approach to Climate Justice and appraises the relevant laws under the tripartite pillars to wit: recognition, distribution and reparation with the aim of understanding how each jurisdiction measure in attaining Climate Justice. Based on the findings, the fourth section makes recommendations and concludes the work.

2. RATIONALE FOR COMPARISON

Although on the opposite sides of the globe, the two countries: Canada and Nigeria share similarities in terms of natural resources and vulnerable populations, which forms the basis for their comparison. Nigeria and Canada both operate federal Constitutional Governments with written

Constitutions which set out the fundamental rights of citizens including the right to life, dignity of human persons, and health, as well as set obligations on the state to create conditions for protection of those rights.[9] Both countries experience extreme weather events due to climate change. While Nigeria experiences severe flooding, droughts and extreme heat waves, Canada faces wild fires, floods and extreme temperatures which disrupt the arctic ecosystem.[10]Both countries have indigenous populations who are particularly vulnerable to climate change; in Nigeria, the Niger Deltans (comprising the Ogoni, Ijaw, Uhrobo, Itsekiri, Calabari, Efik/Ibibio, amongst other tribes located in the Southern part of Nigeria), In Canada, the Aboriginals; including the Indian, Inuit, Metis Peoples of Canada. Both countries have vast oil and gas resources. Canada has the fourth largest oil reserve in the world with 163.63 billion barrels, and second biggest oil producer in North America,[11] Nigeria has the eleventh largest oil reserve globally and largest in Africa.[12]

Both countries are also party to various international treaties on climate change and human rights. Canada is a party to various international agreements on climate change such as the United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Paris Agreement 2015 among others, which endorse climate justice. Canada operates a dualist model of treaty implementation, as such when a treaty is ratified by the executive; the treaty still has to be domesticated by the parliament for it to be enforceable in Canada.[13] Nigeria also operates a dualist model of treaty implementation, as such no treaty entered into by the executive arm of government between Nigeria and any country shall

[9] See section 35 Constitution Act of Canada 1982, Chapter IV and Sections 20 1999 Constitution of the Federal Republic of Nigeria (as amended).

[10] Lynda Collins, 'Indigenous Environmental Rights in Canada' (2010) 47(4) Alberta Law Review 3

[11] World Atlas, *The World's Largest Oil Reserves by Country in 2024* <The World's Largest Oil Reserves by Country In 2024 - WorldAtlas> accessed 24 March, 2025; OPEC, *Opec Share of World Crude oil Reserves,* 2023. <OPEC : OPEC Share of World Crude Oil Reserves> accessed March 24, 2025.

[12] Ibid,

[13] Laura Barnett, 'Canada's Approach to the Treaty-Making Process' (Parliament of Canada HillStudies, 1 April 2021) https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/HillNotes/2021/docs/2021-hn-treaty-making accessed 22 March 2025

enter into force in Nigeria until such treaty has been domesticated by the legislature.[14] Nigeria is signatory to several environmental and climate change treaties including the UNFCCC 1992, the Kyoto protocol 1997 and the Paris Agreement 2015.

3. THE TRIPARTITE APPROACH TO CLIMATE JUSTICE

Considering the impact of climate change on indigenous peoples who are more vulnerable to climate change due to reliance on their environment for sustenance, including farming, fishing, shelter and virtually all aspects of their livelihood,[15] it is imperative that response to climate change and climate action are considered bearing three preconditions in mind: recognition, distribution, and reparation (RDR) as these preconditions underscore the three main pillars under which discussions on climate justice can be subsumed.[16] Reason being that all deliberations on climate justice aim to achieve three main things: (i) recognition and involvement of groups most vulnerable to climate change and their abilities to adapt in decision making and climate action (ii) based on recognition, availability of resources to enable them properly adapt to climate change (iii) climate action should lead to reparations and avenues to seek legal redress.

i. Recognition and Climate Justice

Recognition as a theory of social justice emphasises the importance of acknowledging and respecting the dignity and differences of marginalised groups within the society. Recognition justice is concerned with addressing issues of humiliation, degradation and misrecognition that certain groups face.[17] At the core of recognition is the idea that an individual or certain groups are adequately acknowledged due to certain

[14] Section 12, Constitution of the Federal Republic of Nigeria 1999 (as amended)

[15] DS Olawuyi, 'Advancing Climate Justice in National Climate Actions: The Promises and Limitations of the United Nations Human Rights-Based Approach' (Environmental Law Institute, 2016) 16

[16] Article 3 of The United Nations Framework Convention on Climate Change 1992 incorporates the principle of Common But Differentiated Responsibilities which reflects the recognition of historical emissions and the need for equitable distribution of resources amongst countries to address the adverse effect of climate change on vulnerable communities.

[17] Christopher Preston and Wylie Carr, 'Recognitional Justice, Climate Engineering, and the Care Approach' (2018) 21 (3) Ethics, Policy & Environment 310 https://doi.org/10.1080/21550085.2018.1562527

peculiarities of who they are and where they are.[18] Recognition means fairly representing and considering the cultures, values and conditions of all parties that will be affected by decisions, policy implementation or projects.[19] With regard to climate justice, recognition emphasises the need to acknowledge and consider certain groups in climate change discussions and climate action according to what makes them different, what makes special and particularly vulnerable and how their conditions can be ameliorated. For instance their culture and heritage, their location, their means of livelihood and other factors which makes them particularly special and more vulnerable to climate change and how decisions on climate change affects them. Recognition justice emphasises the need to acknowledge and involve the most vulnerable in decision making about what can go wrong and what must go right.[20] As such, recognition demands that when a Clean Development Mechanism (CDM) project or a biofuel project that requires large parcels of land is to be sited in a locality, considerations of the tradeoffs of such projects on land and water resources of host communities and how they affect the rights of the indigenes must be made in order to ensure that it does not lead to breach of those rights. Recognition justice is pivotal to all other aspects of climate justice, as it lays the foundation for ethical considerations for equitable distribution of resources, and for reparation or redress.

ii. Distribution and Climate Justice

Distribution focuses on fair distribution of the benefits and burdens of climate change for all parties in the climate change struggle. It emphasises how the impacts of climate change are disproportionately felt amongst and within countries and how these should be factored in distribution of the benefits and burdens in managing climate change.[21] Distribution requires

[18] *Ibid.*
[19] Ibid.
[20] P Suarez and others, 'Geoengineering and the humanitarian challenge: What role for the most vulnerable' in J Blackstock and S Low (eds), *Geoengineering our climate? Ethics, politics, and governance* (Earthscan) 193–197.
[21] P Newell, 'Race, Class and the Global Politics of Environmental Inequality' (2005) 5(3) Global Environmental Politics 70–94

countries who have contributed most to climate change to take the lead in mobilising climate finance and facilitating transfer of technologies to developing countries in their effort to combat climate change, so those communities who are most vulnerable to the effects of climate change can easily adapt.[22] Distribution is concerned with welfare and fairness. The link between climate change and distribution justice has been well established in international environmental law and is articulated mainly through the Common but Differentiated Responsibility (CBDR) principle.[23]

Accordingly, Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) 1992 provides that Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their Common but Differentiated Responsibilities and respective capabilities. In view of this, the Green Climate Fund (GCF) was established in 2010 under the Cancun Agreement as a dedicated finance vehicle for developing countries under the UNFCCC framework with the mandate to make ambitious contributions to the global effort towards combating climate change.[24] At the inception of the fund, developed countries pledged to mobilise USD100 billion annually as international climate finance to address the climate crisis and fund mitigation and adaptation in developing countries.[25] As at the date of conducting this research, the GCF has invested approximately USD13.5 billion in 243 mitigation and adaptation projects across 129 developing countries, with a further replenishment record of USD $12.8 billion for its next programming period, totaling to

[22] Article 4 (1)(b), 4 (3) UNFCCC 1992.

[23]Both the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol recognise the CBDR principle. See art 3(1) and 4 UNFCCC and Art 10 Kyoto Protocol respectively. The CBDR principle holds that global response to climate change should be done according to the respective country capabilities, taking into account their ability to adapt to climate change and historical accounts of green-house gas emissions. Further, that developed country parties should take the lead in climate mitigation and provide assistance in terms of climate finance and technology.

[24] Green Climate Fund, *About GCF* <Timeline | Green Climate Fund> accessed 26 November 2024

[25]*Ibid.*

a sum of USD26.3 billion since inception in 2010, a little above a quarter of the $100 billion pledge annually.[26]

Despite the merits of distribution, it has been criticized as being overly focused on the benefits and burdens that are to be shared and not so much about the structure of societies and cultures, or how and why certain groups have been systematically neglected, thus overlooking pressing issues such as recognition and reparations.[27] Hence the need of a three pronged approach that reinforces themselves for climate justice Also, non-appraisal of social and cultural challenges in the distribution of benefits and burdens can also lead to underrepresentation and maladistribution.[28]

iii. Reparation and Climate Justice

Reparation in climate justice recognises the disproportionate effect of climate change on marginalised communities and emphasises the need for equitable solutions and reparative laws and policies that safeguard human rights from the impacts of climate change. It advocates for practices that ensure environmental sustainability while addressing social inequities related to impacts of climate change. Reparation also seeks to ensure that communities affected by climate change are remedied through climate adaptation and mitigation projects, without leading to human right breaches, and where they occur, legal redress should follow. The preamble to the Paris Agreement 2015 emphasises the intrinsic relationship between legality and access to justice, climate action and sustainable development. Reparation emphasises the need of countries to take measures to reach carbon neutrality and remedy communities that might have been directly exposed to negative impacts and consequences of climate change.[29] It requires design and implementation of laws and policies, and

[26] Green Climate Fund, Annual Report 2023, <Annual Report 2023 | Green Climate Fund> accessed 26 November 2024.

[27] C Preston and W Carr, 'Recognitional Justice, Climate Engineering and the Care Approach' (2018) 21(2) Ethics, Policy & Environment 310 https://doi.org/10.1080/21550085.2018.1562527 accessed 16 April 2025

[28] D Schlosberg, 'Theorising Environmental Justice: the Expanding Sphere of a Discourse' (2013) 22(1) Environmental Politics 37–55.

[29] Norwegian Human Rights Institution (NIM), Legal Analysis: The Norwegian Climate Change Framework in Light of Article 8 of the ECHR <NIM brev> accessed 21 March 2025.

strengthening of institutions for climate action, while safeguarding human rights and enhancing living conditions.[30]

3.1Assessing 'Recognition and Climate Justice' under Canadian and Nigerian Legal Frameworks

In light of recognition principle and climate justice, the Canadian Constitution 1867, 1982 recognises and guarantees the rights of the Aboriginals of Canada to their lands. Article 35 of the Constitution Act 1982 enshrines the rights of the aboriginals of Canada, and safeguard against abrogation or derogation from such rights, including their rights to ancestral lands, culture and their environment, which are often impacted by climate change.[31] By so doing, the Canadian Constitution recognises the special circumstances of the Aboriginals and dependence on their ancestral lands and has attempted to safeguard them from acts that may threaten those rights, however, implementation still remains a challenge as the Canadian Constitution does not place an obligation on the state to take specific measure to preserve and protect aboriginal rights. It only guarantees protection of aboriginal rights from abrogation or derogation. Placing positive and negative obligations on the state with regard to guarantee of aboriginal rights will ensure more protection for those rights.[32]Recognising aboriginal rights in the Canadian Constitution has also been implied to mean a duty to consult with the Aboriginals on decisions that may affect their rights and interests. In *Haida Nation v. British Columbia* [33], where the Haida Nation challenged the provincial government's decision to issue a tree farming license for land that the Haida laid claims to. The Supreme Court of Canada held that flowing from section 35 of the Constitution Act, the government has a duty to consult and accommodate Indigenous groups when their rights may be affected.

The Nigerian Constitution 1999 (as amended) on the other hand does not recognise or make provisions for the protection of indigenous rights. It

[30] Ibid.

[31] See also article 35, Canada Constitution Act 1867.

[32] For instance, article 108 of the Norwegian Constitution places the responsibility on the state to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.

[33] (2004) 3 SCR 511 SCC 73.

does not safeguard environmental rights at all, despite the dire situation and vulnerability of certain peoples in the Niger Delta who are more prone to direct impacts of climate change due to several years of oil pollution, have access to their ancestral lands, culture, heritage and natural resources stifled.[34]

Pursuant section 35 of the Constitution Act 1982 of Canada, the Impact Assessment Act 2019 (IAA/the Act) was enacted. The Impact Assessment Act 2019 is designed to ensure governments' commitment with respect to the rights of indigenous peoples, and to evaluate the environmental, social, health and economic impacts of projects, including their contribution to climate change.[35] The IAA recognises rights of indigenous peoples and emphasises the importance of considering indigenous rights and traditional knowledge in impact assessment processes in order to foster sustainability.[36] The Act also provides for an indigenous governing body authorised to act on behalf of indigenous groups, community or people and requires that they are consulted on the impacts of projects on their lands and environment. The Act is also innovative in enhancing access to information and meaningful public participation as it requires that descriptions of proposed projects and decisions made by the Minister or the Agency on project approvals or refusal are posted on the internet for the public to see. It also mandates that the public is provided with an opportunity to participate meaningfully.[37] The Act also empowers the Impact Assessment Agency of Canada (the Agency) to demand from other federal regulatory authorities who have powers over designated projects[38]specific information from project proponents who are under their purview that it may require to perform their functions. This synergy

[34] SU Ighedoso, 'Climate Change: Assessing the Vulnerability of the Niger Delta Region in Nigeria' (2020) 3 Modern Advances in Geography, Environment and Earth Sciences 92

[35] Section 1 of the IAA 2019 defines adverse effects on the environment as a physical activity or designated project that causes *non-negligible* adverse changes to the following components of the environment including: fish and fish habitat, aquatic species, migratory birds, marine environment, pollution to boundary and international waters, change to physical and cultural heritage, use of land for traditional purposes or thing that is of historical, archaeological, paleontological or architectural significance.

[36] See Preamble to the Impact Assessment Act, S.C. 2019, c. 28.

[37] Ibid, ss. 9(8), 10, 11.

[38] Ibid. section 10

and crosscutting function gives the Agency broader powers and a wider reach for implementation.[39]

However, some gaps seem to exist in the Act, due to the wide discretion granted to the Governor in Council to alter contents of impact assessments. The Act empowers the Governor in Council to *add or remove* a component of the environmental, health, social or economic matter in an assessment process. While this can be advantageous as it gives rooms for a more robust impact assessment exercise since the Governor in Council can include as much matters to be considered in an impact assessments, thus allowing for adaptability and relevance even in the face of evolving scientific knowledge or societal priorities, it also allows for removals to be made, which can affect the standards, rigor and scope of impact assessment exercises even where the impacts on human and indigenous rights are dire. Furthermore, concerns have also been raised on the level of involvement of indigenous peoples in meaningful participation in decision making.[40] Although the Act provides for consideration of traditional knowledge, it does not enfranchise aboriginal peoples or the general public in the final decision making process, it is the government that makes the final decision.[41]

The Nigerian Environmental Impact Assessment 1992 also provides for impact assessment of projects in order to factor and address the effects that such projects may have on the environment. However, it does not make provision for considerations of indigenous rights in impact assessment reports, indigenous knowledge or effects of projects on the culture of people. It does not make provision for inclusion of indigenous people in the decision making process. Also, the EIA restricts impact assessments to environmental impacts and does not consider other key aspects of sustainable development such as economic, social and cultural aspects of development.[42] Development projects might affect local communities,

[39] Ibid. section 13.
[40] Lynda Collins and Meghan Murtha, 'Indigenous Environmental Rights in Canada: The Right to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish and Trap' (2010) 47 Alberta Law Review 4, 5
[41] Ibid; Section 63, IAA 2019.
[42] Section 4, Environmental Impact Assessment Act 1992.

displace populations or disrupt cultural practices. Without assessing social impacts, projects may lead to social inequality or loss of cultural heritage. Likewise, failure to assess the economic impact of projects may lead to unemployment, loss of livelihood and means of sustenance, or unbalanced regional development. The primary essence of impact assessment of projects is to forestall and mitigate negative impacts of projects on the environment and to realise sustainable development for communities where those projects are to be sited. In this era of climate change, the impacts of climate change goes beyond environmental impacts, it also aggravates social, economic conditions.[43] Consequently, it is important that impact assessments of planned projects include the social, economic and cultural impacts of sustainability in order to ensure a more holistic approach to development, and enhance climate adaptation. The EIA 1992 also has the problem of disenfranchisement in final decision making. Despite that it provides for considerations of the concerns of the general public, it is the government that makes the final decision whether or not to go ahead with a proposed project.

In terms of specific climate change legislation and recognition of indigenous rights, the Net-zero Emissions Accountability Act 2021 of Canada mandates the Minister for environment to factor indigenous rights and indigenous knowledge when setting greenhouse gas emission targets.[44] This ensures that their perspectives, knowledge and rights are considered in Canada's climate strategies.[45]

The Nigerian Climate Change Act 2021 also does not mention indigenous rights or consideration of indigenous knowledge in mitigation or adaptation plans. By so doing, it excludes indigenous rights and indigenous knowledge in decision making, which negatively affects the level inclusivity and transparency. Integrating Indigenous knowledge is

[43] EU Directive 2014/52/EU. The EU directive on EIA states: 'climate change will continue to cause damage to the environment and compromise economic development. In this regard, it is appropriate to assess the impact of projects on climate and their vulnerability to climate change.

[44] Sections 8, 9 (5) Net-Zero Emissions Accountability Act 2021.

[45] Government of Canada, 'Canadian Net-Zero Emissions Accountability Act' <Canadian Net-Zero Emissions Accountability Act - Canada.ca> accessed 25 March, 2025.

important in setting emission reduction target for several reasons. For instance, indigenous communities possess generations of ecological knowledge, offering sustainable practices like biodiversity conservation and climate resilient agriculture.[46] Indigenous lands often provide critical ecosystems that act as carbon sinks, like the amazon forests for instance, or the vast swathes tropical rain forests in Cross-Rivers State Nigeria.[47]

3.2 Assessing Distribution and Climate Justice under Canada's and Nigeria's Legal Frameworks

With regard to entrenching distribution principle in climate change governance in Canada, the Greenhouse Gas Pollution Pricing Act 2018, is a good point to begin with. The Greenhouse Gas Pollution Pricing Act (GGPPA) 2018 establishes a carbon pricing system on greenhouse gas emissions, ensuring that revenue collected are returned to provinces and territories and used to support vulnerable communities.[48] It operates through two major parts namely a fuel charge which is an incremental levy on fossil fuels[49] and an Output-Based Pricing System (OBPS) that applies to large industrial facilities mandating them to pay for emissions that exceed permitted limits, thereby acting as an incentive to reduce emission and invest in greener technologies.[50] Through this system, all proceeds accrued from the federal fuel charge are returned to the specific province

[46] UNDP, 'Indigenous Knowledge is Crucial in the Fight against Climate Change-Here's Why' (31 July 2024) https://www.undp.org/blog/indigenous-knowledge-crucial-fight-against-climate-change-heres-why accessed 25 March 2025

[47] Green Climate Fund, 'Making Nigeria's Cross Rivers state investment ready for REDD+' https://www.greenclimate.fund/projects/making-nigerias-cross-river-state-investment-ready-redd accessed 25 March 2025.

[48] Part 1, section 7 Greenhouse Gas Pollution Pricing Act, 2018.

[49] As at 30th March, 2025, the federal fuel charge for gasoline in Canada was $0.176 per litre. Although on march 15, 2025 the Government of Canada had announced that as from April 1, fuel charge will be removed from gas, consequently making gas cheaper, and bringing a stop to the carbon rebate system. While consumers will benefit from lower cost, removing carbon tax could reduce incentives for eco-friendly practices. In Nigeria however, carbon tax is still present, especially with the removal of fuel subsidy which has affected the low income earners most severely. Thus a rebate system can still be adopted to cushion the effects on citizens. Government of Canada <Fuel charge rates - Canada.ca> accessed April 17, 2025.

[50] Government of Canada, 'How Carbon Pricing Works' https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/putting-price-on-carbon-pollution.html accessed 4 April 2025

or territory where they were collected, for instance Yukon and Nunavut. While for other provinces, the money is returned directly to individuals, and families through the Canada Carbon Rebate system, while the remaining goes to indigenous governments, farmers and SMEs.[51] The carbon pricing system being one of Canada's primary tools for addressing climate change, shows distribution principle. The system is designed to charge higher rates to provinces that are not taking sufficient steps to reduce emissions, with the revenue from this system often returned to citizens in the form of rebates, particularly targeting lower-income households who are most vulnerable to the financial impacts of carbon pricing. This has been an effective means of fair distribution of resources to enhance capacity to adapt to climate change and has helped to reduce Canada's greenhouse gas emissions in line with its 2030 target.[52]Canada's Net-Zero Emissions Accountability Act (the Act/NZEAA) 2021 is a pivotal component of the country's climate governance architecture, with the main objective to legally enshrine Canada's commitment to achieving net-zero greenhouse gas emissions by 2050.[53] The NZEAA itself does not contain explicit provisions for socio-economic equity, vulnerable group protection, or climate justice.[54] What it does is that it aligns with the distribution goal through its systemic design by functioning in tandem with other federal policies that operationalise fairness in Canada's climate strategy.[55] Most notably, the NZEAA is complemented by the Greenhouse Gas Pollution Pricing Act (GGPPA) 2018, which establishes a national carbon pricing regime.[56]Under this regime, provinces and territories are required to implement carbon pricing mechanisms or be subject to the federal backstop.[57] Revenues generated from the federal fuel charge are

[51] Ibid.

[52] Government of Canada, *2030 Emissions Reduction Plan: Clean Air, Strong Economy* https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/emissions-reductions-2030.html accessed 4 April 2025

[53] *Net-Zero Emissions Accountability Act, SC* 2021.

[54] DV Wright, 'Canadian Net-Zero Emissions Accountability Act: A Bridge over the Implementation Gap?' (2023) 73 University of New Brunswick Law Journal 3 https://ssrn.com/abstract=4568559 accessed 14 April 2025

[55] Sara Hastings-Simon and Jason Dion, *Climate Policy Report Card: Canada's Net-Zero Law in Context* (Canadian Climate Institute, 2022).

[56] Section 186, Greenhouse Gas Pollution Pricing Act, 2018.

[57]*Ibid,* Part 1, s.7 (Fuel Charge), Part 2 (Output-Based Pricing System)

returned directly to individuals and households through the *Climate Action Incentive* (CAI), with a progressive structure that disproportionately benefits low- and middle-income earners.[58] In this way, although not embedded in the NZEAA itself, a distributive function is realised through Canada's broader climate policy synchronisation, making it one of the few countries where carbon pricing is legally tied to direct economic relief for households.[59]

Nigeria does not have any law similar to Canada's Greenhouse gas Pollution Pricing Act 2018 which redistributes carbon tax revenue to vulnerable communities or low income household to enhance their capacity for climate adaptation. The closest Nigerian law with a semblance of carbon rebate or carbon tax redistribution is the Host Community Development Trust established under the Petroleum Industry Act (PIA) 2021[60], which establishes a fund where a fraction of the annual operating expenditure (3%) of upstream oil companies are contributed into the fund, and the proceeds channeled towards development needs, clean up and rehabilitation of host communities.[61] It is important to note however that the driving idea behind the fund is not to deter greenhouse gas emissions from oil exploration activities, neither are proceeds of the fund focused on climate adaptation projects, but mainly for cleanup and for providing basic social amenities for host communities. A careful examination of the PIA reveals that there is no mandate for proceeds of the Host Community Development Trust (HCDT) to be utilised specifically for climate adaptation projects. [62]This creates a problem, as the special attention required for climate adaptation projects may be erroneously assumed to be covered by the mandate of the fund, even where that may not be the case. Particularly considering that host communities in the Niger Delta are more vulnerable and prone to direct impacts of climate change, it is important that in determining how the funds should be utilised, special

[58] Government of Canada, 'Climate Action Incentive Payments' < https://www.canada.ca/en/revenue-agency/services/child-family-benefits/cai-payment.html > accessed April 10, 2025.
[59] Nicholas Rivers and Brandon Schaufele, 'Salience of Carbon Taxes in the Gasoline Market' (2015) 7(1) Journal of Environmental Economics and Management 68
[60] Section 235, Petroleum Industry Act 2021.
[61] Ibid, Section 240.
[62] Ibid, section 239 (5).

attention is given to climate adaptation needs. Concerns have been raised on the importance of need assessment reports on host communities in utilisation of the fund to be more robust and reflective of an up to date need of host communities and not just a rehearsal of outdated needs assessment reports that were conducted as part of the CSR projects of oil companies which are more suited to the companies priorities than that of the community. Concerns have also been raised on lack of meaningful participation in decision making by representatives of host communities in determining which development projects to implement.[63] While the HCDT can be seen as an indirect pathway to toward environmental justice and resilience, especially in communities vulnerable to the socio-environmental impacts of fossil fuel extraction. However, its alignment with climate justice is limited, as it does not explicitly address climate adaptation or mitigation.

The Nigerian Climate change Act (the Act/CCA) 2021 incorporates distribution principle in its institutional design. But its normative commitments are limited by legal ambiguities, implementation gaps and exclusionary provisions. For instance there is no provision for indigenous representation on the National Climate Council, which raises concerns on the level of participation and inclusion of indigenous peoples in decision making in allocating resources for climate adaptation.[64] The Act also establishes the National Climate Fund whose proceeds is meant to, amongst other things be utilised for climate mitigation and adaptation efforts, especially for vulnerable communities and high risk prone areas.[65] The Act also empowers the National Climate Council to assign carbon budgets per sector, thus allowing for burden-sharing across industries, potentially preventing any single sector from bearing a disproportionate burden. However, the Act is lacking in terms of specificity on implementation, as it does not define how vulnerable populations will be identified or prioritised for climate finance or adaptation support.

[63] SDN Policy Brief, *Opportunities to improve the Host Community Development Trust under Nigeria's Petroleum Industry Act* (Stakeholder Democracy Network, April 2023) 11 https://www.stakeholderdemocracy.org/wp-content/uploads/2023/04/PIA-and-HCDT-Report.pdf accessed 26 March 2025

[64] See section 5, Climate Change Act 2021.

[65] Ibid, section 15.

Furthermore, there is no legal guarantee of benefits, rebates or targeted support to women, youth, displaces persons or indigenous groups who face disproportionate climate risks. Regarding mobilisation of funds, there is limited clarity on how the national climate change fund is to be funded. According to the Act, sources of funding include sums appropriated by the National Assembly, Subventions, grants and donations, funding from international organisations, carbon tax and emission trading, and fines and charges from private and public entities for flouting their climate change mitigation and adaptation obligations. [66] The problem with mobilising and utlisation of funds under the Act are multifaceted. For one, appropriations from the National Assembly are for running of the Council,[67] and not for climate adaptation or mitigation projects. Also, due to lack of clarity on what amounts to climate offenses and penalties under the Act, getting fines for flouting climate offenses open avenues for evasion and corruption.

3.3 Assessing Reparations and Climate Justice under Canada's and Nigeria's Legal Frameworks

The Principle of Reparation is deeply rooted in restitutive justice and emphasizes the need to place the victim in the position he would have been before the harm occurred. The principle of reparation in climate justice is also in tandem with the principle of Legality and Access to Justice which emphasises the importance of basing climate decisions law and legality, and the need for procedural and substantive measures to be in place for people to seek legal redress.

Starting with the Constitution, the Nigerian 1999 Constitution (as amended) falls short in providing basis for climate justice, despite its provisions in Chapter II of the Constitution specifically Sections 17(2) (d) and 20 with regard to enhancing human life, dignity and protection of the environment by the State. These rights are unenforceable by virtue of the non-justiciability, and ouster provisions of section 6 (6) (c), hence constituting a challenge for attaining climate justice in Nigeria.

Although the Constitution articulates state obligation to protect the environment, and by extension, an obligation to ensure conditions for a

[66] Ibid, section 15.
[67] Ibid, section 15 (1)(a).

dignified living, including a clean and healthy environment, are in place, because this is only a positive obligation and no negative obligation to support, realising the rights connected to the obligation to protect the environment is subject to political will of those in power. This challenge is further compounded due to the constitutional ouster on any matter or enforcement pertaining to chapter II of the Constitution as the rights enumerated there are non-justiciable.[68]

In attempt to circumvent this ouster provision, by a combined reading of the provisions of Sections 20 and 33 of the 1999 Constitution (as amended) and articles 16 and 24 of the African Charter on Human and Peoples' Rights, the Supreme Court of Nigeria in the case of *Centre for Oil Pollution Watch (COPW) v NNPC*[69] expanded the frontiers of *locus standi* in environmental cases and held that "public spirited individuals or civil society organisations can bring an action before courts against relevant public authorities and private entities to demand their compliance with relevant laws and to ensure the remediation, restoration and protection of the environment". Further, that the plaintiff were not professional interlopers, as they could demonstrate that the actions of the respondents had affected the rights of members of the public who were also their members, and that they had no personal gain from the suit. At this point, it is important to note however, that although by the Supreme Court's ruling, the frontiers of *locus standi* has been expanded to include public spirited persons (Including NGOs) suing to seek due performance of statutory functions or enforcement of statutory provisions or public laws, especially those designed to protect human lives, public health and the environment, it has yet to address the issue of 'subject matter jurisdiction' stemming from matters falling under chapter II of the Constitution, as the Constitution via section 6 (6) (c) expressly bars the exercise of judicial powers in respect of matters falling under the chapter II of the Constitution which includes environmental matters. The submission is that despite that the Supreme Court has expanded the scope of *locus standi* to include public spirited individuals or organisations to sue relevant public authorities, it has yet to address the issue of whether courts can adjudicate upon matters falling under chapter II of the constitution. It has

[68] See Section 6 (6) (c) Constitution of the Federal Republic of Nigeria 1999 (as amended).
[69] (2019) 5 NWLR (Pt. 1666) 518.

yet to holistically address the issue of subject matter jurisdiction of matters falling under chapter II of the Constitution, specifically section 20 which touches on environmental matters. Even as the Supreme Court has ruled that NGOs have *locus* in respect of public interest suits, can the Court grant the reliefs sought against government agencies? Even where it attempts to do so, does it have the powers to do so, considering the constitutional ouster? Will ruling otherwise be tantamount to abandoning the constitution, or amending the Constitution? Can a court ruling amend extant constitutional provisions? If the answers to these questions are in the negative, then the issue of whether the courts have powers to entertain matters of state obligation with respect to the environment have yet to be laid to rest. The question of whether the courts can adjudicate on environmental matters have yet to be holistically determined, and poses as a challenge to access to justice, a key element in attaining climate justice. A remedy will be an amendment of section 6 (6) (c) of the Constitution, with a view to making the provisions of chapter II of the constitution justiciable, considering the inseparable nexus between economic, social and cultural rights, sustainable development and good and responsible governance. Furthermore, despite that section 34 (2) of the Climate Change Act 2021 empowers a court before which a climate suit is instituted to make preventive, compelling or restitutive orders in respect of the matter, the ouster provisions of section 6 (6) (c) of the 1999 Constitution still acts as an impediment and may give ground for preliminary objections that challenge jurisdiction of a court before which a climate or environmental matter is instituted, ultimately affecting chances of judicial intervention for reparations. A counter argument may be hinged on the provisions of Item 60 (a) of the Exclusive legislative list, which when read in conjunction with section 6 (6) (c) of the 1999 Constitution (as amended), gives an opening for justiciability of rights falling under chapter II of the Constitution, as Item 60 (a) allows the National Assembly to establish and regulate authorities to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy.[70] This however, is only aspirational, and does not automatically take effect, as it is contingent upon an authority having

[70] Second Schedule, Part I, Exclusive Legislative List, Item 60 (a), Constitution of the Federal Republic of Nigeria 1999 (as amended).

been established and its jurisdiction challenged, before the provisions of Item 60 (a) takes effect. Even when such an authority is established, it would require specific legislation granting it enforcement powers before it can serve as an effective exception to section 6 (6) (c) of the 1999 Constitution (as amended).

Closely related to this challenge is the problem of institutional fragmentation and exclusion of key environmental agencies such as NESREA from performing their regulatory functions in the oil and gas sector, -the major contributing sector to Greenhouse gas emissions and climate change, as an impediment to reparations and accountability.[71] By so doing, the exclusionary provisions of NESREA from performing its key function in the oil and gas sector undermines the very foundation of coordinated environmental management. This exclusion creates a regulatory gap that weakens accountability and enforcement of climate related environmental standards. When a single agency such as the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) dominates both policy and enforcement in the oil and gas sector, it compromises checks and balances, the robust expertise, check and balance that should have been coming from the NESREA is missing.

Canada's approach to reparation in climate justice is more robust, reflecting a combination of legal, economic, and institutional strategies. The Canadian Charter of Rights and Freedoms, particularly Section 7 and 15, has been invoked in climate litigation to assert the right to life and security in the face of climate inaction, as seen in *La Rose v. Canada*.[72] Although this case was dismissed at the preliminary stage, it signals a growing jurisprudential recognition of climate harms as rights-based issues.

Section 5 of the Canadian Environmental Protection Act (CEPA) 2019 formally recognises the right to a healthy environment. While this is statutory and not constitutional, it enhances the normative framework for environmental reparation and opens future possibilities for stronger judicial enforcement.

[71] See ss. 7 (c)(g)(h)(j)(k),8 (k)(l)(m),(n)(s) NESREA Act 2018 (amendment Act).
[72] (2020) FC 1008.

Economically, the Greenhouse Gas Pollution Pricing Act (GGPPA) embeds reparation by redistributing carbon tax revenues directly to individuals, especially low-income households. This mechanism ensures that vulnerable populations are shielded from the regressive effects of carbon pricing, aligning with both distributive and reparative principles.

Nevertheless, challenges persist. Indigenous communities continue to face hurdles in accessing justice and receiving targeted climate adaptation funding. While Section 35 of the Constitution recognises indigenous rights, their integration into climate governance remains limited. For instance while section 22 (1) (g) of the Impact Assessment Act 2019 requires that indigenous knowledge be considered alongside scientific information during EIA processes, decision making authority remains centralised with the Governor in Council. Further, there is no legal requirement for consent, even where projects affect constitutionally protected indigenous rights. Nevertheless, when compared to Nigeria, Canada demonstrates considerable progress in operationalising reparative justice, though further steps are needed to ensure inclusivity and enforceability.

4. TOWARDS A COMPREHENSIVE REFORM OF NIGERIA'S CLIMATE GOVERNANCE FRAMEWORK: RECOMMENDATIONS

In light of these findings, this article recommends a comprehensive reform of Nigeria's climate governance framework to align with international best practices and ensure climate justice is attainable in the following manner.

First, since the Constitution is the *grund norm* in every country, it is trite for any recommendation to begin from there. Just as with the Canadian Constitution, the Nigerian Constitution should be amended to include the right to a clean, safe and healthy environment. The right to a clean, healthy and safe environment has been recognised by the United Nation General Assembly as a basic human right, and a *sine qua non* for realising other fundamental human rights such as the right to life, health, safety, property amongst others. Furthermore, indigenous rights should be recognised, enshrined and safeguarded in Nigeria's Constitution. Recognising indigenous rights and the right to a clean, safe and healthy environment

without placing obligations on the state to take measure to safeguard those rights will be of no importance, as such the paper further recommends that the 1999 Constitution (as amended) should be overhauled to place a justiciable obligation on the government to take measures to safeguard indigenous rights, and the right to a clean, healthy and safe environment.

Second, Canadian Constitutions which stops at recognising indigenous rights, without compelling positive obligations, which stands the risk of being subject to political will, the amendment in Nigeria's Constitution should go a notch further by placing both a positive obligation on the state to act, and a negative obligation on the state to desist from any actions that may impinge on indigenous rights and the right to a clean and healthy environment. By so doing, there will be clear cut rights, obligations and corresponding duties.

Third, Section 6 (6) (c) of the 1999 Constitution, should be expunged so potential litigants can successfully sue in the public's interest, and hold authorities accountable for their actions or inactions that aggravate climate change impact and vulnerabilities. Doing so will also give more impetus to the provisions of section 34 (2) of the Climate Change Act which empowers courts to make orders in climate cases. Fourth, Nigeria's Climate Change Act 2021 should be amended to include indigenous representation in the National Council on Climate Change. Doing so will foster inclusion and meaningful participation of indigenous peoples in decision-making processes' and climate action. Doing so will also enhance clarity in identifying and prioritising vulnerable groups in distribution of resources for impactful mitigation and adaptation strategies. Furthermore, the Climate Change Act 2021 should be amended to include a rebate system similar to that of Canada's Greenhouse Gas Pollution Pricing Act 2018 that enables direct distribution of carbon tax rebates to low-income earners and households, so as to ameliorate the harsh effects of carbon tax on the Nigerian people, especially with the removal of fuel subsidy. This would create an avenue for fair burden-sharing and provide financial relief to low-income and climate-vulnerable communities while encouraging emission reductions. The Climate Change Act 2021 should be amended to define criteria for identifying vulnerable populations and set out criteria

for prioritising their access to climate finance and adaptation support. Doing so will enhance implementation and ensure broader reach.

Fifth, is the need for section 7 of the NESREA Act 2018 (as amended) to be amended to extend its regulatory and enforcement powers to the oil and gas sector. A semblance of such an amendment will be "*Notwithstanding the provisions of any other legislation, the Agency shall have concurrent jurisdiction to monitor, enforce, and prosecute violations of environmental standards in all sectors, including but not limited to, the oil and gas industry, extractive industries, and industrial operations.*" By so doing, any implied or express limitations of NESREA emanating from the Act or from other legislation will be eliminated. Finally, the Host Community Development Trust (HCDT) under the PIA 2021 should be expanded to explicitly include climate adaptation and mitigation objectives. While the HCDT supports general development, redirecting some funds towards climate-smart infrastructure would align the oil sector more with climate justice goals.

5. CONCLUSION

Climate justice has become the critical lens through which sustainable climate action is viewed. Climate Justice enjoins fair and equitable representation at the climate change discourse table. It demands inclusive representation in climate governance and the equitable sharing of the benefits and burdens of climate change. The role of law in attaining climate justice cannot be over emphasised, hence the need to constantly review the law to ensure it does not stifle voices, lead to exclusion of vulnerable groups from meaningful participation in decision-making processes, or stand as stumbling blocks to attaining climate justice. As such, national laws and policies must be designed and implemented in a manner that fosters a holistic approach to attaining climate justice while implementing climate action. This paper has demonstrated how the tripartite approach to climate justice gives room for broad representation and inclusion of all stakeholders in climate discussions, fair distribution of resources for effective mitigation and adaptation for the most vulnerable populations, and the role of law in allowing victims of climate change to vindicate their rights at the judicial forums. The paper has successfully conducted a comparative study on the laws of Canada and Nigeria, using the tripartite

approach to climate justice: (recognition, distribution and reparation pillars), as the gauge to assess each country's level of preparedness, especially considering that the crux of all discussions on climate justice seek to achieve three primary objectives: fair representation, fair distribution and reparations for damages due to climate change. Fundamental gaps such as limiting laws on environmental standards enforcement, institutional fragmentation and exclusionary provisions, ouster constitutional provisions, and obscure and inchoate legal provisions in key climate legislations such as the Climate Change Act 2021, the PIA, the NESREA Act, and the 1999 Constitution (as amended) still act as legal challenges to attaining climate justice in Nigeria.