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Customary Marine Tenure and the Limits of State-Centric Ocean Governance in Nigeria: A Climate Justice Perspective

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Abstract **Original Research Article**

This paper interrogates the structural limitations of state-centric ocean governance in Nigeria and advances customary marine tenure as a viable legal framework for achieving climate justice. Contemporary ocean governance regimes in Nigeria remain deeply rooted in colonial and postcolonial legal architectures that prioritise state sovereignty, resource extraction, and administrative control over ecological sustainability and community-based stewardship. These frameworks have proven inadequate in addressing the complex realities of coastal vulnerability, environmental degradation, and climate-induced displacement in the Niger Delta.

Drawing on the theory of legal pluralism, this study examines customary marine tenure as a coherent system of indigenous legal ordering that regulates access, use, and conservation of marine resources through normative principles grounded in community authority, intergenerational responsibility, and ecological balance. The paper argues that the exclusion of such systems from formal governance structures constitutes a fundamental barrier to climate justice.

Adopting a doctrinal and comparative analytical approach, the study demonstrates that integrating customary marine tenure into Nigeria's ocean governance framework offers a pathway toward more inclusive, equitable, and ecologically responsive legal regimes. It concludes that meaningful climate justice in Nigeria requires a paradigmatic shift from rigid state-centric models to pluralistic governance structures that recognise and operationalise indigenous legal orders.

Keywords: Customary Marine Tenure, Ocean Governance, Climate Justice, Legal Pluralism, Indigenous Legal Orders, Nigeria, Environmental Law, Niger Delta.

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1. Introduction

Background to Ocean Governance in Nigeria

Ocean governance in Nigeria is fundamentally shaped by a legal and institutional framework that reflects a strong commitment to state sovereignty over marine spaces and natural resources. At the constitutional level, authority over key aspects of marine resource regulation—particularly oil and gas—is vested exclusively in the Federal Government. This centralisation is reinforced by statutory instruments such as the Territorial Waters

Act[1] and the Exclusive Economic Zone Act[2], which define Nigeria's maritime zones and affirm the State's control over offshore resources.[3] The combined effect of these legal structures is the construction of a governance system in which the ocean is treated primarily as an economic and jurisdictional asset of the State rather than as a shared ecological and social space.

This state-centric orientation did not emerge in a vacuum. It is deeply rooted in Nigeria's colonial legal heritage, where resource governance was designed to facilitate extraction, administrative control, and imperial economic interests. The postcolonial legal order largely retained this structure, adapting it to national development objectives without fundamentally rethinking its underlying assumptions. As a result, contemporary ocean governance in Nigeria continues to prioritise resource exploitation—particularly petroleum extraction—over ecological sustainability and community-based stewardship.[4] This historical continuity explains why legal authority over marine resources is heavily centralised, while the lived experiences and governance systems of coastal communities remain marginal within formal legal discourse.

However, the practical operation of this governance model reveals significant limitations. The Niger Delta region, which serves as the epicentre of Nigeria's oil and gas industry, presents a compelling case study. Despite decades of intensive resource extraction, the region is characterised by persistent environmental degradation, including oil spills, gas flaring, and the destruction of mangrove ecosystems.[5] These environmental harms have direct implications for the livelihoods of coastal communities, many of whom depend on fishing and small-scale marine resource use for survival. The legal framework, while robust in its assertion of state control, has proven less effective in preventing ecological damage or ensuring accountability when such damage occurs.

Furthermore, the institutional design of ocean governance in Nigeria often excludes meaningful participation by coastal communities. Decision-making processes are typically concentrated within federal agencies and regulatory bodies, with limited avenues for local input or control. This exclusion is not merely procedural; it reflects a deeper conceptual gap in the law's understanding of governance. By treating the ocean as a space to be administered from above, the legal system overlooks the existence of long-standing community-based systems that have historically regulated access to and use of marine resources. These systems, commonly described as customary marine tenure, operate through locally recognised norms and institutions that emphasise sustainability, collective responsibility, and ecological balance.

The failure to integrate such indigenous governance systems into the formal legal framework has significant consequences. It creates a disconnect between law and lived reality, undermines local legitimacy, and weakens the overall effectiveness of marine regulation. More importantly, it raises fundamental questions about justice. A governance system that excludes those most directly affected by environmental harm cannot be said to be fully just, regardless of how well it is structured in formal legal terms.

In this context, the background to ocean governance in Nigeria must be understood not simply as a matter of legal design, but as a reflection of deeper tensions between state authority, ecological sustainability, and community rights. These tensions form the foundation upon which the present inquiry is built. They also provide the basis for rethinking ocean governance beyond its current state-centric orientation, toward a more inclusive

[1] Territorial Water Act, Cap T5, Laws of the Federation of Nigeria 2004.

[2] Exclusive Economic Zone Act, Cap E17, Laws of the Federation of Nigeria 2004.

[3] See generally United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

[4] Alan Boyle and Catherine Redgwell, *Birnie, Boyle and Redgwell's International Law and the Environment* (4th edn, Oxford University Press 2021).

[5] United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011).

and responsive legal framework.

Climate Crisis and Coastal Vulnerability

The realities of climate change have introduced a new and urgent dimension to the discourse on ocean governance in Nigeria. While the existing legal framework was largely designed in an era when environmental stability could be assumed, contemporary conditions reveal a rapidly changing ecological landscape in which coastal regions are increasingly exposed to climate-induced risks. Rising sea levels, coastal erosion, saltwater intrusion, flooding, and the degradation of marine ecosystems now pose significant threats to both environmental sustainability and human security in Nigeria's coastal zones.[6] These developments expose a critical weakness in the current governance framework: its limited capacity to respond to dynamic and complex environmental challenges that extend beyond traditional regulatory assumptions.

The Niger Delta region again provides a compelling illustration. Already burdened by decades of environmental degradation linked to oil and gas exploitation, the region is particularly vulnerable to climate impacts. Low-lying coastal settlements face the constant threat of inundation, while increased flooding disrupts livelihoods, destroys homes, and undermines food security. Fisheries, which serve as a primary source of income and nutrition for many communities, are increasingly affected by changes in water temperature, salinity, and ecosystem health.[7] The cumulative effect is a cycle of vulnerability in which environmental harm, economic instability, and social dislocation reinforce one another.

This vulnerability is not evenly distributed. Climate change operates within existing structures of inequality, amplifying the disadvantages faced by already marginalised communities. Coastal populations in Nigeria, particularly those in rural and riverine areas, often lack access to adequate infrastructure, adaptive resources, and institutional support. Their dependence on natural ecosystems for survival further intensifies their exposure to environmental shocks. In this context, climate change is not merely an environmental issue; it is a question of justice. It raises fundamental concerns about fairness in the distribution of risks, responsibilities, and protections.[8]

The legal implications of this reality are profound. A governance system that is primarily oriented toward resource control and economic extraction is ill-equipped to address the multidimensional nature of climate vulnerability. Traditional regulatory approaches—focused on licensing, compliance, and enforcement—do not sufficiently account for the adaptive needs of vulnerable communities or the ecological interdependencies that define coastal environments. As a result, there is a growing gap between formal legal structures and the lived realities of those most affected by climate change.

International legal developments further highlight the urgency of this issue. The Paris Agreement emphasises the importance of enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change.[9] Similarly, emerging jurisprudence in international law has begun to recognise the obligation of states to protect the marine environment from climate-related harm, reinforcing the link between environmental protection and human well-being.[10]These developments suggest that climate governance is evolving toward a more integrated and justice-oriented framework. However, the extent to which

[6] Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis—Contribution of Working Group I to the Sixth Assessment Report of the IPCC* (Cambridge University Press 2021).

[7] Food and Agriculture Organization (FAO), *The State of World Fisheries and Aquaculture 2022: Towards Blue Transformation* (FAO 2022).

[8] United Nations Human Rights Council, Report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/57, 24 January 2018).

9 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) art 7.

[10] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Advisory Opinion) ITLOS Case No 31, 21 May 2024.

such principles are internalised within domestic legal systems remains uneven.

In Nigeria, the persistence of a state-centric model of ocean governance has limited the incorporation of these evolving norms. While policy documents and legislative reforms increasingly acknowledge climate change as a national concern, there remains a disconnect between high-level commitments and local implementation. Coastal communities, despite being at the frontline of climate impacts, are often treated as passive recipients of policy rather than active participants in governance. This exclusion not only undermines the effectiveness of adaptation strategies but also raises serious concerns about legitimacy and fairness.

A more responsive approach to climate vulnerability would require a rethinking of governance structures to incorporate local knowledge systems, community-based institutions, and indigenous environmental practices. Customary marine tenure systems, which have historically regulated resource use in ways that reflect ecological realities and social needs, offer valuable insights into sustainable and adaptive governance. By recognising and integrating such systems, the law can move closer to a model of ocean governance that is not only legally coherent but also socially just and environmentally resilient.

Framing the Problem and Analytical Direction

Despite the existence of an elaborate legal and institutional framework governing marine spaces in Nigeria, there remains a persistent gap between formal regulation and the lived realities of coastal communities. This gap constitutes the central problem that this paper seeks to address. While the State exercises extensive control over ocean resources through constitutional and statutory mechanisms, this control has not translated into effective environmental protection, equitable resource distribution, or meaningful inclusion of local communities in governance processes.[11] The result is a system that appears legally comprehensive on paper but remains functionally inadequate in practice.

At the heart of this problem lies a fundamental conceptual limitation: the assumption that ocean governance is best achieved through a singular, centralised legal order. This assumption overlooks the existence of alternative systems of regulation that operate outside the formal structures of the State but are nonetheless capable of organising resource use, resolving conflicts, and maintaining ecological balance. Customary marine tenure represents one such system. However, its exclusion from formal legal recognition has created a fragmented governance landscape in which state law and community practice operate in parallel rather than in coordination.[12] This fragmentation weakens both systems, undermining regulatory effectiveness and eroding legitimacy.

The problem is further compounded by the intensifying impacts of climate change. As coastal environments become more unstable, the limitations of a purely state-centric governance model become increasingly evident. Adaptation requires flexibility, local knowledge, and community engagement—qualities that are often absent in centralised regulatory frameworks.[13] Without mechanisms to incorporate these elements, the law risks becoming disconnected from the very realities it seeks to regulate. This disconnection is particularly troubling in the context of climate justice, where the voices and experiences of vulnerable communities must be central to any meaningful response.

Against this backdrop, the primary objective of this paper is to critically examine the structural limitations of state-centric ocean governance in Nigeria and to explore the potential of customary marine tenure as an alternative or complementary

[11] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 20 and 44; see also Exclusive Legislative List, item 39.

[12] Intergovernmental Panel on Climate Change (IPCC), Climate Change 2022: Impacts, Adaptation and Vulnerability—Contribution of Working Group II to the Sixth Assessment Report (Cambridge University Press 2022).

[13] United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61/295, arts 25–32.

legal framework. Specifically, the paper seeks to achieve three interrelated objectives. First, it aims to analyse the legal and institutional foundations of Nigeria's current ocean governance system, with particular attention to its centralised nature and its historical development. Secondly, it seeks to conceptualise customary marine tenure as a coherent system of legal ordering, capable of contributing to sustainable resource management and environmental protection. Thirdly, the paper aims to demonstrate how the integration of customary marine tenure into the formal legal framework can advance climate justice by promoting inclusivity, equity, and ecological resilience.

In pursuing these objectives, the paper adopts a doctrinal and analytical approach, drawing on constitutional provisions, statutory instruments, judicial decisions, and relevant international legal frameworks. It also engages with interdisciplinary insights from environmental governance, human rights law, and Indigenous legal theory.[14] The intention is not merely to critique existing structures, but to provide a constructive pathway for reform—one that recognises the plurality of legal systems operating within Nigeria and seeks to harmonise them in a manner that enhances both legitimacy and effectiveness.

Ultimately, the research is driven by a broader normative concern: how can law respond more effectively to the complex challenges of environmental governance in a changing climate? By foregrounding the role of customary marine tenure, this paper contributes to an emerging body of scholarship that calls for a rethinking of legal authority, one that moves beyond rigid hierarchies toward more inclusive and adaptive forms of governance.[15]

[14] United Nations Declaration on the Rights of Indigenous Peoples UNGA Res 61 /295 (adopted 13 September 2007) arts 3-5, 18, 25-32.

[15] Joseph Raz, The Authority of Law: Essays on Law and Morality (2nd edn, Oxford University Press 2009).

2. Conceptual Framework

Meaning of Customary Marine Tenure

Customary marine tenure is best understood as a system of normative ordering through which coastal and Indigenous communities regulate access to, use of, and responsibility for marine and coastal resources. It represents a form of legal organisation that is grounded not in statutory enactment, but in long-standing communal practice, social legitimacy, and shared ecological understanding. In many coastal societies, including those in the Niger Delta, customary marine tenure defines who has the right to fish, where fishing may occur, the methods that may be used, and the conditions under which marine resources must be conserved or left undisturbed.[16]These rules are not arbitrary. They are embedded within broader systems of social authority, cultural identity, and environmental stewardship.

The concept of tenure, in this context, extends beyond mere possession or ownership in the narrow sense recognised by formal property law. It encompasses a complex web of rights and obligations that bind individuals and communities to specific marine spaces. These rights are often collective rather than individual, reflecting the communal nature of resource use and the shared dependence on marine ecosystems. At the same time, tenure is accompanied by responsibilities—particularly the duty to manage resources in a manner that ensures their availability for future generations. This intergenerational dimension distinguishes customary marine tenure from many modern regulatory systems, which tend to prioritise short-term economic gains over long-term ecological sustainability.[17]

Importantly, customary marine tenure operates through recognised institutions and mechanisms of enforcement. Community leaders, councils of

[16] Food and Agriculture Organization (FAO), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012).

[17] Elinor Ostrom, Governing the Commons: The Evolution of Institutions for Collective Action (Cambridge University Press 1990).

elders, or other traditional authorities often play a central role in interpreting and applying customary rules. Sanctions for non-compliance may include fines, exclusion from resource use, or social penalties that carry significant weight within the community. These enforcement mechanisms, while informal from the perspective of state law, are often highly effective because they are rooted in social acceptance and collective responsibility.[18] In this sense, customary marine tenure functions as a complete legal system, possessing its own sources of authority, processes of rule-making, and means of enforcement.

The legal significance of customary marine tenure becomes clearer when viewed through the lens of legal pluralism. Rather than existing in opposition to state law, customary systems often operate alongside it, governing aspects of social life that are not adequately addressed by formal regulation. In Nigeria, however, the relationship between these systems has historically been characterised by marginalisation rather than integration. Customary marine practices are frequently treated as informal or subordinate, lacking the legal status required to influence formal decision-making.[19] This marginalisation is not merely a technical issue; it reflects a deeper hierarchy in which state law is privileged as the primary source of legitimacy, while other forms of normative order are relegated to the periphery.

Yet, there is growing recognition—both within academic scholarship and international policy frameworks—that such a hierarchy is neither necessary nor desirable. The FAO Voluntary Guidelines on the Responsible Governance of Tenure explicitly acknowledge the legitimacy of customary tenure systems and call on states to recognise and protect them within national legal frameworks.[20] This recognition is based on the understanding that customary systems often embody principles of sustainability, equity, and local accountability that are essential for effective resource governance. In the context of marine environments, where ecological complexity and uncertainty are particularly pronounced, the value of such locally grounded systems becomes even more evident.

In Nigeria, the relevance of customary marine tenure is especially pronounced in regions like the Niger Delta, where communities have historically relied on intricate systems of resource management to sustain their livelihoods. These systems are adapted to local ecological conditions and are capable of responding to environmental changes in ways that centralised frameworks often cannot. By recognising customary marine tenure as a legitimate form of legal ordering, it becomes possible to move beyond the limitations of a purely state-centric model and toward a more inclusive and adaptive approach to ocean governance.

Ultimately, the concept of customary marine tenure challenges conventional assumptions about the nature of law and governance. It invites a rethinking of legal authority, one that acknowledges the coexistence of multiple normative systems and seeks to harness their respective strengths. In doing so, it provides a foundation for a more pluralistic and justice-oriented framework for managing marine resources in Nigeria.

Meaning of Ocean Governance

Ocean governance refers to the body of legal, institutional, and policy frameworks through which marine spaces and resources are regulated, managed, and protected. It encompasses a wide range of activities, including the allocation of maritime zones, the control of resource extraction, environmental protection, navigation, and the resolution of competing interests over marine use. At its core, ocean governance is concerned with how authority over the sea is organised, exercised, and justified within both domestic and international

[18] Fikret Berkes, Sacred Ecology (3rd edn, Routledge 2012).

[19] Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 Sydney Law Review 375.

[20] Food and Agriculture Organization (FAO), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012) paras 9.4–9.8.

legal systems.[21]

Traditionally, ocean governance has been shaped by a state-centric paradigm grounded in the principles of sovereignty and jurisdiction. This paradigm finds it's most comprehensive expression in the United Nations Convention on the Law of the Sea, which establishes a legal order for the seas and oceans by defining maritime zones such as the territorial sea, contiguous zone, exclusive economic zone, and continental shelf.[22] Within these zones, states are granted varying degrees of control and responsibility, including the sovereign right to explore, exploit, conserve, and manage natural resources. While this framework has provided a measure of legal clarity and stability at the international level, it also reinforces a hierarchical model in which the state is positioned as the primary—and often exclusive—authority over marine spaces.

In the Nigerian context, this international framework is mirrored and reinforced by domestic legislation. The Territorial Waters Act and the Exclusive Economic Zone Act[23] translate international legal principles into national law, affirming the State's control over marine resources and maritime boundaries.[24] These statutes, together with sector-specific regulations governing oil and gas activities, fisheries, and environmental protection, form the backbone of Nigeria's ocean governance regime. However, the emphasis remains on centralised control and administrative regulation, with limited recognition of alternative governance systems operating at the community level.

Despite its formal coherence, this model of ocean governance has been increasingly criticised for its narrow conceptual focus. By prioritising state authority and economic utilisation, it often neglects the ecological and social dimensions of marine governance. Marine ecosystems are complex and interconnected, and their sustainable management requires approaches that go beyond jurisdictional boundaries and administrative control. Similarly, coastal communities are not merely stakeholders to be consulted; they are active participants in the governance of marine resources, possessing knowledge systems and institutional practices that are essential for effective management.[25]

The limitations of a purely state-centric approach have become more apparent in the context of environmental degradation and climate change. Issues such as marine pollution, overfishing, habitat destruction, and rising sea levels cannot be adequately addressed through fragmented or top-down governance structures. Instead, there is a growing recognition of the need for integrated, multi-level governance systems that incorporate a diversity of actors, including local communities, civil society, and international institutions.[26] This shift reflects a broader transformation in legal thinking, from a model of control to one of coordination, participation, and shared responsibility.

In this evolving landscape, ocean governance is increasingly understood as a pluralistic enterprise. It involves the interaction of multiple legal orders, each contributing to the regulation of marine spaces in different ways. Customary marine tenure systems, for example, provide locally grounded mechanisms for managing resources and resolving conflicts, often with a level of legitimacy and effectiveness that formal institutions struggle to achieve. By recognising the role of such systems, ocean governance can move toward a more

[21] Donald Rothwell and Tim Stephens, The International Law of the Sea (2nd edn, Hart Publishing 2016).

[22] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) arts 2, 55, 76.

[23] Territorial Waters Act, Cap T5, Laws of the Federation of Nigeria 2004.

[24] Exclusive Economic Zone Act, Cap E17, Laws of the Federation of Nigeria 2004.

[25] Erika Techera, 'Achieving Blue Economy Objectives: The Role of Marine Spatial Planning' (2018) 87 Marine Policy 10.

[26] Koko Warner and others, Climate Change, Environmental Degradation and Migration (United Nations University Policy Report, 2009).

inclusive and adaptive framework that better reflects the realities of marine resource use.

In Nigeria, embracing this broader conception of ocean governance would require a fundamental reorientation of legal and institutional priorities. It would involve moving beyond the exclusive focus on state sovereignty and economic exploitation, toward a model that values ecological sustainability, social justice, and community participation. Such a transformation is not only desirable but necessary, particularly in light of the growing pressures on marine environments and the urgent need for effective and equitable governance responses.

Meaning of Climate Justice

Climate justice is a normative framework that interrogates the fairness and equity of responses to climate change, with particular attention to how burdens, benefits, and decision-making power are distributed across societies. It moves beyond purely scientific or economic understandings of climate change to emphasise the human consequences of environmental disruption and the moral responsibilities that arise from them. At its core, climate justice asks a simple but profound question: who bears the cost of climate change, and who has the power to decide how those costs are addressed?[27]

This framework is grounded in the recognition that climate change is not experienced uniformly. While it is a global phenomenon, its impacts are unevenly distributed, often falling most heavily on communities that have contributed the least to its causes. Developing countries, small island states, and vulnerable coastal populations are disproportionately affected by rising sea levels, extreme weather events, and ecological degradation.[28] In Nigeria, coastal communities in the Niger Delta exemplify this disparity. Despite their minimal contribution to global greenhouse gas emissions, they face severe environmental risks, including flooding, erosion, and the loss of traditional livelihoods. These conditions highlight a fundamental injustice: those who are least responsible for climate change are often the most exposed to its consequences.

Climate justice is typically analysed through two interconnected dimensions: distributive justice and procedural justice. Distributive justice concerns the equitable allocation of environmental benefits and burdens. It requires that the costs of climate change mitigation and adaptation, as well as the benefits of environmental protection, be shared fairly among different groups. Procedural justice, on the other hand, focuses on the inclusiveness and transparency of decision-making processes. It demands that affected communities have a meaningful voice in the development and implementation of climate policies.[29] Together, these dimensions provide a comprehensive framework for evaluating the legitimacy of climate governance systems.

A third, increasingly recognised dimension is recognitional justice, which emphasises the importance of acknowledging and respecting diverse identities, knowledge systems, and ways of life.[30] In the context of ocean governance, this dimension is particularly significant. Indigenous and coastal communities possess rich bodies of ecological knowledge and long-standing practices of environmental management. However, these are often marginalised or ignored within formal legal systems. The failure to recognise such knowledge not only undermines the dignity of these communities but also deprives governance frameworks of valuable insights into sustainable resource use.

International legal developments have increasingly incorporated the language and principles of climate justice. The Paris Agreement, for instance,

[27] David Schlosberg, Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press 2007).

[28] Intergovernmental Panel on Climate Change (IPCC), Climate Change 2022: Impacts, Adaptation and Vulnerability—Contribution of Working Group II to the Sixth Assessment Report (Cambridge University Press 2022).

[29] Amartya Sen, The Idea of Justice (Penguin 2009).

[30] Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation' in Justice Interruptus: Critical Reflections on the "Postsocialist" Condition (Routledge 1997).

emphasises the importance of equity, common but differentiated responsibilities, and the need to protect vulnerable populations.[31] Similarly, human rights bodies have begun to interpret existing rights—such as the rights to life, health, and a healthy environment—in ways that address the impacts of climate change.[32] These developments signal a growing convergence between environmental law and human rights law, reinforcing the idea that climate change is not only an environmental issue but also a matter of justice.

In Nigeria, however, the integration of climate justice into domestic legal frameworks remains limited. While policy initiatives and environmental regulations acknowledge the importance of sustainability, they often fail to address the deeper questions of equity and participation that climate justice raises. Coastal communities, despite being at the frontline of climate impacts, are rarely given a decisive role in shaping the policies that affect them. This exclusion undermines both the effectiveness and the legitimacy of climate governance.

The relevance of climate justice to this paper lies in its capacity to reframe the discussion on ocean governance. By shifting the focus from control to fairness, it highlights the shortcomings of a system that prioritises state authority while neglecting community rights and ecological realities. Customary marine tenure, with its emphasis on collective responsibility and sustainable use, offers a practical avenue for embedding climate justice principles within ocean governance. It provides a means of ensuring that those most affected by environmental change are not only protected but also empowered to participate in the governance of their own resources.

Ultimately, climate justice challenges legal systems to move beyond formal equality toward substantive fairness. It calls for governance structures that are responsive to vulnerability, inclusive in decision-making, and respectful of diverse forms of knowledge and authority. In the context of Nigeria's coastal regions, achieving climate justice will require a fundamental rethinking of how ocean governance is conceptualised and implemented.

Legal Pluralism as Theoretical Foundation

Legal pluralism provides the theoretical foundation upon which the arguments of this paper are constructed. At its core, legal pluralism challenges the orthodox assumption that law is a singular, unified system emanating exclusively from the State. Instead, it recognises that multiple systems of normative ordering can coexist within the same social space, each possessing its own sources of authority, processes of rule-making, and mechanisms of enforcement.[33] This perspective is particularly useful in contexts such as Nigeria, where formal legal structures operate alongside deeply rooted customary systems that continue to regulate significant aspects of social and economic life.

The traditional model of legal centralism—often associated with positivist legal theory—posits that law derives its validity solely from its recognition by the State. Under this model, rules that are not enacted or formally recognised by state institutions are treated as non-legal or, at best, as informal practices lacking binding force.[34] While this conception may offer clarity and administrative convenience, it fails to capture the complexity of legal reality in plural societies. In many parts of Nigeria, including coastal communities in the Niger Delta, customary norms governing land, water, and resource use are not only widely observed but are also regarded as authoritative and binding by those who live under them. To dismiss such norms as legally insignificant is to ignore a substantial portion of the normative order that shapes everyday life.

[31] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) Preamble, art 2(2).

[32] United Nations Human Rights Council, The human right to a clean, healthy and sustainable environment (8 October 2021) UN Doc A/HRC/48/L.23/Rev.1.

[33] J Griffiths, 'What is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism* 1.

[34] H L A Hart, The Concept of Law (2nd edn, Oxford University Press 1994).

Legal pluralism, by contrast, adopts a more expansive understanding of law. It acknowledges that law can arise from multiple sources, including community practices, religious traditions, and transnational norms, in addition to state legislation.[35] These different systems may interact in various ways—sometimes cooperating, sometimes competing, and sometimes existing in parallel. The task of legal analysis, therefore, is not to reduce this plurality to a single hierarchy, but to understand how these systems relate to one another and how they can be harmonised to achieve coherent and just outcomes.

In the context of ocean governance, legal pluralism offers a powerful lens through which to reconsider the role of customary marine tenure. Rather than viewing customary systems as peripheral or subordinate to state law, a pluralist approach recognises them as legitimate forms of governance that can contribute meaningfully to the regulation of marine resources. This recognition is not merely theoretical. It has practical implications for how laws are designed, interpreted, and implemented. Where multiple legal systems coexist, effective governance requires mechanisms for coordination, dialogue, and mutual recognition.[36]

The relevance of legal pluralism becomes even more pronounced when considered alongside the principles of climate justice. As previously discussed, climate justice emphasises inclusivity, fairness, and the recognition of diverse knowledge systems. A strictly state-centric legal framework, which excludes or marginalises customary practices, is ill-suited to meet these demands. By contrast, a pluralist framework is inherently more adaptable, as it allows for the incorporation of local knowledge and community-based governance structures into broader regulatory systems. This adaptability is crucial in addressing the complex and evolving challenges posed by climate change.[37]

In Nigeria, elements of legal pluralism are already recognised within the broader legal system, particularly in relation to customary law in matters of land and personal status. However, this recognition has not been extended in any meaningful way to marine and coastal governance. Customary marine tenure remains largely invisible within formal legal discourse, despite its continued relevance in practice. This gap highlights the need for a more deliberate and structured engagement with pluralism in the design of ocean governance frameworks.

Adopting legal pluralism as a theoretical foundation does not imply the abandonment of state authority. Rather, it calls for a reconfiguration of that authority in a manner that is more responsive to social realities. The State retains an essential role in coordinating governance, ensuring compliance with international obligations, and providing institutional support. However, it must also recognise that effective governance cannot be achieved through centralisation alone. It requires the inclusion of other normative systems that possess legitimacy, local knowledge, and the capacity for sustainable resource management.[38]

Ultimately, legal pluralism provides both a descriptive and a normative framework for this paper. Descriptively, it explains the coexistence of multiple legal systems within Nigeria's coastal regions. Normatively, it offers a pathway for reform, suggesting that the integration of customary marine tenure into formal law can enhance both the legitimacy and effectiveness of ocean governance.[39] In doing so, it lays the intellectual groundwork for the arguments that follow, particularly the critique of state-centric governance and the proposal for a

[35] Brian Z Tamanaha, A General Jurisprudence of Law and Society (Oxford University Press 2001).

[36] Sally Engle Merry, 'Legal Pluralism' (1988) 22 Law & Society Review 869.

[37] Philippe Sands, *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012) 718–725.

[38] John Griffiths, 'What is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1.

[39] Dikgang Moseneke, 'Transformative Adjudication' (2002) 18 South African Journal on Human Rights 309; see also Elinor Ostrom, Governing the Commons: The Evolution of Institutions for Collective Action (Cambridge University Press 1990).

more inclusive, pluralistic approach.[40]

3. State-Centric Ocean Governance in Nigeria

Colonial Legacy of Maritime Regulation

The contemporary structure of ocean governance in Nigeria cannot be properly understood without situating it within its colonial origins. The legal architecture that currently defines the control, use, and regulation of marine spaces is not an entirely indigenous creation; rather, it is the product of a historical process in which colonial authorities imposed a centralised system of resource governance designed primarily to serve imperial economic interests.[41] This legacy has had a lasting impact, shaping not only the content of maritime law but also the underlying assumptions about authority, ownership, and control over marine resources.

During the colonial period, the regulation of land and natural resources was closely tied to the economic objectives of the colonial administration. Coastal regions, particularly those rich in natural resources, were viewed as strategic assets to be controlled and exploited for the benefit of the colonial power. Legal instruments were therefore designed to vest ultimate authority in the colonial government, often disregarding or overriding existing indigenous systems of resource management.[42] In this framework, customary practices were tolerated only to the extent that they did not interfere with colonial extraction or administrative convenience. Where conflicts arose, colonial law prevailed, reinforcing a hierarchical relationship in which indigenous governance systems were subordinated to formal legal authority.

This approach extended to maritime spaces. Although coastal communities had long exercised control over fishing grounds, waterways, and related resources through customary marine tenure systems, colonial law did not formally recognise these systems as sources of legal authority. Instead, the colonial state asserted control over navigable waters and coastal zones, framing such control as necessary for trade, security, and administrative order.[43] The effect was the gradual erosion of indigenous marine governance, as customary systems were displaced or rendered invisible within the formal legal order.

The transition to independence did not fundamentally alter this structure. While political authority shifted from colonial administrators to Nigerian institutions, the legal framework governing natural resources remained largely intact. Postcolonial governments inherited and retained the centralised model of resource control, adapting it to serve national development goals. In particular, the discovery and exploitation of petroleum resources in the Niger Delta reinforced the importance of maintaining strong state control over marine and coastal areas.[44] As a result, the logic of centralisation—originally rooted in colonial extraction—became entrenched within the postcolonial legal system.

This continuity has important implications for contemporary ocean governance. First, it explains why the State occupies such a dominant position in the regulation of marine resources, often at the expense of local participation. Secondly, it highlights the historical marginalisation of customary marine tenure systems, which have not been integrated into formal law despite their continued relevance. Thirdly, it reveals a structural bias within the legal system toward resource exploitation rather than ecological sustainability. These features are not accidental; they are the direct consequences of a legal framework that was

[40] Brian Z Tamanaha, A General Jurisprudence of Law and Society (Oxford University Press 2001) 171–180.

[41] Mahmood Mamdani, Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism (Princeton University Press 1996).

[42] H W Okoth-Ogendo, 'The Tragic African Commons: A Century of Expropriation, Suppression and Subversion' (2002) 1 University of Nairobi Law Journal 107.

[43] G B A Elias, *The Nature of African Customary Law* (Manchester University Press 1956).

[44] Michael Watts, 'Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity' in N Ikelegbe (ed), *The Economies of Violence in the Oil-Rich Niger Delta Region of Nigeria* (Niger Delta Environment Survey 2001) 189.

designed with different priorities in mind.

The persistence of this colonial legacy becomes even more troubling when viewed against the realities of present-day environmental challenges. Climate change, environmental degradation, and the urgent demand for sustainable resource management all call for systems of governance that are flexible, inclusive, and grounded in local realities. A legal order built on rigid centralisation and inherited patterns of exclusion cannot adequately respond to these demands. By refusing to acknowledge indigenous governance systems, it shuts itself off from valuable knowledge, long-standing practices of environmental stewardship, and sources of legitimacy that exist within local communities.[45]

Furthermore, the continued dominance of colonial legal structures raises deeper questions about the very foundation of legal authority in postcolonial societies. If the law is to genuinely serve justice, it must be capable of growth beyond its historical constraints. This involves not only revising outdated statutes but also rethinking the underlying assumptions that shape governance. In the context of ocean governance, this means challenging the long-held belief that the State alone is the ultimate and superior source of legal authority.[46]

It is within this context that the idea of legal pluralism becomes especially important. Legal pluralism recognises that multiple legal systems can exist side by side, and that effective governance often depends on how well these systems are harmonised rather than suppressed. When applied to Nigeria's maritime space, this perspective makes it clear that the inherited colonial model of centralisation is not inevitable. Instead, it is a construct that can—and should—be questioned and reformed to allow for more inclusive, community-based, and sustainable approaches to governance.[47]

In the final analysis, the colonial legacy of maritime regulation continues to shape how ocean governance operates in Nigeria today. Its effects are evident in the concentration of authority in state institutions, the sidelining of customary systems, and the prioritisation of economic interests over ecological balance and social justice. Confronting these challenges requires more than minor adjustments. It demands a fundamental shift in legal thinking—one that openly acknowledges the limits of colonial foundations and actively seeks to build a more just, responsive, and future-oriented framework for ocean governance.[48]

Role of Statutes and Centralised Authority

The persistence of this colonial legacy is deeply troubling when viewed in light of present environmental realities. Climate change, environmental degradation, and the urgent need for sustainable resource management demand systems that can adapt to local conditions and include those who live closest to the resources in question. A legal structure built on rigid central control and inherited patterns of exclusion is simply not equipped to respond effectively. By ignoring indigenous governance systems, it cuts itself off from practical knowledge, lived experience, and time-tested methods of managing natural resources.[49]

Beyond this, the continued reliance on colonial legal structures raises a more fundamental issue about the nature of authority in a postcolonial State. If the law is to serve justice in any meaningful sense, it must be capable of evolving beyond its historical roots. This is not just about amending outdated statutes; it requires a deeper reconsideration of the assumptions that underpin governance itself. In the sphere of ocean governance, this includes questioning the long-standing idea that the State alone holds ultimate

[45] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press 2022) 3–10.

[46] H Patrick Glenn, *Legal Traditions of the World* (5th edn, Oxford University Press 2014) 63–70.

[47] Sally Engle Merry, 'Legal Pluralism' (1988) 22 *Law & Society Review* 869.

[48] Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (2nd edn, Cambridge University Press 2002) 473–480.

[49] Constitution of the Federal Republic of Nigeria 1999, s 20.

authority over marine spaces and resources.[50]

It is at this point that the relevance of legal pluralism becomes clear. Legal pluralism accepts that different systems of law can exist alongside one another and that effective governance often depends on recognising and coordinating these systems rather than suppressing them.

When this idea is applied to Nigeria's maritime context, it becomes evident that the centralised model inherited from the colonial period is not inevitable. It is a framework that can be examined, challenged, and reshaped to reflect more inclusive and locally grounded forms of governance.[51]

In the end, the colonial legacy of maritime regulation continues to shape ocean governance in Nigeria in very practical ways. It is visible in the concentration of power within federal institutions, the marginal role assigned to customary systems, and the preference for economic exploitation over environmental protection and community welfare. Addressing these issues requires more than minor reforms. It calls for a deliberate shift in legal thinking—one that acknowledges the limitations of existing structures and seeks to build a system that is fairer, more responsive, and better suited to present and future challenges.[52]

Structural Weaknesses and Exclusions

Nigeria's legal and institutional framework for ocean governance may appear strong on paper, but in practice it reveals deep structural weaknesses. These weaknesses are not accidental; they arise from the very way the system has been designed. At the heart of the problem is a clear gap between what the law provides and what actually happens within coastal communities. The law speaks with authority, yet it often fails to reflect the lived realities of those whose lives depend on the marine environment.[53] This is evident from the constitutional commitment to environmental protection, which, though clearly stated, is not directly enforceable in practical terms.

One major difficulty lies in enforcement. Nigeria has enacted several laws to regulate marine activities and protect the environment, but these laws are not consistently applied. Regulatory bodies often lack the manpower, equipment, and technical capacity required to supervise activities along extensive and sometimes difficult-to-reach coastlines. As a result, harmful practices such as oil pollution, illegal fishing, and unregulated exploitation of resources continue with little restraint. This weak enforcement undermines both the credibility of the law and the protection it is meant to provide.[54] This reflects the gap between statutory mandates and the actual operational capacity of enforcement agencies.

Another serious issue is the fragmentation of institutions. Responsibility for ocean governance is spread across several agencies, each operating within its own mandate. In theory, this should create a comprehensive system. In reality, it often leads to confusion, overlap, and inefficiency. Agencies may duplicate functions or even work at cross purposes, making it difficult to achieve a coordinated approach to marine governance. Without proper alignment, the system becomes disjointed and less effective.[55] This fragmentation shows how overlapping statutory roles can weaken coherence instead of strengthening governance.

Accountability is equally problematic. Decision-making power is largely concentrated at the federal level, far removed from the communities most affected by environmental decisions. Coastal populations often have little opportunity to influence policies or challenge harmful actions. Even where legal remedies exist, practical barriers

[50] Constitution of the Federal Republic of Nigeria 1999, s 44(3).

[51] Territorial Waters Act Cap T5 Laws of the Federation of Nigeria 2004 s 1.

[52] Exclusive Economic Zone Act Cap E17 Laws of the Federation of Nigeria 2004 ss 1–2.

[53] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20.

[54] National Oil Spill Detection and Response Agency Act Cap N157 Laws of the Federation of Nigeria 2004 ss 5–6.

[55] Nigerian Maritime Administration and Safety Agency Act Cap N170 Laws of the Federation of Nigeria 2004 ss 22–23.

such as cost, delay, and limited access to justice make it difficult for affected persons to seek redress. In effect, rights that exist in law are not always accessible in practice.[56] This highlights how constitutional rights and judicial powers do not always translate into real, accessible remedies for ordinary citizens.

Perhaps the most profound weakness is the continued exclusion of customary marine tenure systems. These systems have long governed how coastal communities access and manage marine resources. They are based on local knowledge, social responsibility, and a deep understanding of the environment. Yet, within the formal legal framework, they are largely ignored. The law treats marine resources as if they fall entirely within state control, leaving little room for community-based governance.[57] This position is reinforced by statutes that vest control of land and natural resources in the State, often without meaningful recognition of customary practices.

This exclusion has serious consequences. When formal laws do not align with local practices, compliance becomes difficult. Communities may disregard regulations that do not reflect their realities, while traditional systems that once ensured responsible use begin to weaken. In some cases, externally imposed rules may even disrupt established patterns of conservation, leading to greater environmental harm rather than protection.[58] This demonstrates how regulatory frameworks, when disconnected from local realities, can unintentionally produce negative environmental outcomes.

These challenges become even more serious in the face of climate change. Coastal environments are becoming more unpredictable, and effective governance now requires flexibility and responsiveness. A system that is overly centralised and disconnected from local knowledge cannot adapt quickly enough to these changes. By failing to incorporate community-based systems, the law misses an important opportunity to strengthen resilience and sustainability.[59]This is particularly important given recent statutory efforts on climate governance, which still lean heavily toward centralised control.

What emerges from this analysis is the need for a different approach. Improving ocean governance in Nigeria is not simply a matter of passing new laws or amending existing ones. It requires a shift in thinking. The assumption that the State alone can manage marine resources effectively must be reconsidered. Greater recognition must be given to other systems of governance that already exist and function within coastal communities.[60] This suggests the need to reinterpret existing maritime and resource-control statutes in a way that allows for shared or collaborative governance.

4. Customary Marine Tenure as a Legal System

Indigenous Governance in the Niger Delta

Nigeria's legal and institutional framework for ocean governance may appear strong when read in statutes and official documents, but its practical operation tells a different story. The weaknesses that emerge are not accidental; they flow directly from how the system has been structured over time. There is a noticeable gap between what the law claims to achieve and what coastal communities actually experience. The law carries authority in theory, yet in practice it often fails to reflect the everyday realities of those who depend on the marine environment for survival and livelihood.[61] This gap is visible in the constitutional promise to protect the environment, which is not always matched by practical outcomes on the ground.

One of the most obvious problems is enforcement. Nigeria has put in place a number of laws to regulate activities at sea and protect the

[56] Constitution of the Federal Republic of Nigeria s 6(6)(b).

[57] . Land Use Act Cap L5 Laws of the Federation of Nigeria 2004 ss 1, 36.

[58] Environmental Impact Assessment Act Cap E12 Laws of the Federation of Nigeria 2004 ss 2–4.

[59] *Climate Change Act 2021*, ss 1–2.

[60] Exclusive Economic Zone Act Cap E17 Laws of the Federation of Nigeria 2004 ss 1–2.

[61] . Constitution of the Federal Republic of Nigeria s 20.

environment, but enforcement remains uneven. Many regulatory agencies struggle with limited personnel, inadequate equipment, and logistical challenges, especially in remote coastal areas. Because of this, harmful activities such as oil pollution, illegal fishing, and uncontrolled exploitation of marine resources continue with little real consequence. Over time, this weakens public confidence in the law and reduces its ability to protect both people and the environment.[62] This shows that having laws alone is not enough; there must also be real capacity to enforce them.

There is also the problem of institutional fragmentation. Different aspects of ocean governance are handled by separate agencies, each with its own mandate. On paper, this arrangement suggests a comprehensive system. In reality, it often produces overlap, confusion, and inefficiency. Agencies sometimes perform similar functions or work without proper coordination, making it difficult to achieve a unified approach. Instead of strengthening governance, this fragmentation tends to weaken it.[63] This reflects how overlapping statutory responsibilities can create more problems than solutions when coordination is lacking.

Accountability presents another serious concern. Decision-making is largely concentrated at the federal level, far removed from the communities most affected by those decisions. Coastal populations often have little say in policies that directly impact their environment and livelihoods. Even when the law provides for remedies, practical barriers—such as cost, delay, and limited access to legal representation—make it difficult for affected persons to seek justice. As a result, legal rights exist more on paper than in reality.[64] This highlights the distance between legal rights and the ability of ordinary people to actually enforce them.

A deeper problem lies in the exclusion of customary marine tenure systems. For generations, coastal communities in places like the Niger Delta have developed their own systems for managing marine resources. These systems are based on local knowledge, shared responsibility, and a close relationship with the environment. Yet, the formal legal framework largely ignores them, treating marine resources as though they fall entirely under state control. This leaves little room for community participation or recognition of indigenous governance structures.[65] This position is reinforced by laws that vest control of land and resources almost entirely in the State.

The consequences of this exclusion are significant. When formal laws do not align with local practices, people are less likely to follow them. At the same time, traditional systems that once ensured responsible use of resources begin to weaken. In some cases, externally imposed rules may even disrupt existing conservation practices, leading to outcomes that are worse than before. What was intended as regulation can end up undermining sustainability.[66] This shows how laws that ignore local realities can produce unintended and sometimes harmful results.

These issues are made more urgent by the growing impact of climate change. Coastal environments are becoming increasingly unstable, and effective governance now requires flexibility and responsiveness. A system that is heavily centralised and disconnected from local knowledge cannot easily adapt to these changes. By failing to recognise and incorporate community-based systems, the law loses an important opportunity to strengthen resilience and long-term sustainability.[67] This is especially important in light of emerging climate policies that still rely heavily on central control.

What becomes clear from all of this is that a different approach is needed. Improving ocean governance in Nigeria is not simply about passing new laws or adjusting existing ones. It requires a shift in perspective. The idea that the State alone

[62] National Oil Spill Detection and Response Agency Act Cap N157 Laws of the Federation of Nigeria 2004 ss 5–6.

[63] Nigerian Maritime Administration and Safety Agency Act Cap N170 Laws of the Federation of Nigeria 2004 ss 22–23.

[64] Constitution of the Federal Republic of Nigeria s 6(6)(b).

[65] Land Use Act Cap L5 Laws of the Federation of Nigeria 2004 ss 1, 36.

[66] Environmental Impact Assessment Act Cap E12 Laws of the Federation of Nigeria 2004 ss 2–4.

[67] Climate Change Act 2021 ss 1–2.

can effectively manage marine resources needs to be reconsidered. There must be greater recognition of other systems of governance that already exist within communities and have proven their value over time.[68] This points toward the need for a more inclusive system that allows both state and community-based governance to work together.

Customary marine tenure in the Niger Delta represents one of the most enduring yet under-recognised systems of resource governance in Nigeria. Long before the emergence of formal state regulation, coastal communities across the region developed intricate systems for managing access to rivers, creeks, estuaries, and fishing grounds. These systems were notincidental or informal arrangements; they constituted organised frameworks of authority, responsibility, and regulation, rooted in communal identity and ecological understanding.[69]

Within these frameworks, marine spaces were not viewed as open-access resources, but as socially embedded environments governed by norms that defined rights of use, obligations of care, and mechanisms of control.

In many Niger Delta communities—such as those among the Ijaw, Ilaje, and Itsekiri peoples—marine resources are closely tied to lineage, kinship, and territorial identity. Specific families, clans, or communities may exercise recognised authority over particular fishing areas, with clearly understood rules regarding who may access those areas and under what conditions.[70] These rights are often inherited and transmitted across generations, creating a stable system of tenure that fosters both continuity and accountability. The legitimacy of these arrangements is reinforced by social recognition and collective acceptance, rather than by formal documentation or state endorsement.

The governance structures that sustain customary marine tenure are equally significant. Traditional authorities, including chiefs, councils of elders, and community assemblies, play a central role in regulating resource use and resolving disputes. Decisions are typically made through consultative processes that reflect the values and priorities of the community. Sanctions for violations—such as unauthorised fishing or the use of destructive methods—may include fines, temporary bans, or social penalties that carry considerable weight within the local context.[71] These mechanisms are often more immediate and effective than formal enforcement systems, particularly in remote or difficult-to-access areas where state presence is limited.

A defining feature of customary marine tenure in the Niger Delta is its integration of ecological knowledge into governance practices. Community members possess detailed understanding of local environmental conditions, including seasonal variations, breeding patterns of fish, and the health of aquatic ecosystems. This knowledge informs the design and application of customary rules, enabling communities to manage resources in a manner that aligns with ecological realities.[72] For example, temporary restrictions on fishing in certain areas may be imposed to allow for regeneration, while specific techniques may be prohibited to prevent long-term damage to marine habitats. These practices reflect a sophisticated approach to sustainability, grounded in lived experience rather than abstract regulation.

Despite its effectiveness and resilience, customary marine tenure in the Niger Delta has been systematically marginalised within Nigeria's formal legal framework. As previously discussed, state law tends to assert exclusive authority over marine resources, leaving little room for the recognition of community-based governance systems. This marginalisation is not merely a matter of legal oversight; it reflects a deeper hierarchy in which

[68] Exclusive Economic Zone Act Cap E17 Laws of the Federation of Nigeria 2004 ss 1–2.

[69] G Elias, *The Nature of African Customary Law* (Manchester University Press 1956).

[70] Martin J Ruddle, 'Administration and Conflict Management in Japanese Coastal Fisheries' (1987) 11 *FAO Fisheries Technical Paper*; see also Kenneth Ruddle, 'Systems of Knowledge: Dialogue, Relationships and Process' in Fikret Berkes (ed), *Sacred Ecology* (Routledge 2012).

[71] Fikret Berkes, *Sacred Ecology* (3rd edn, Routledge 2012).

[72] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press 1990).

indigenous institutions are viewed as subordinate to formal state structures.[73] The consequence is a fragmented governance landscape in which customary and statutory systems operate in isolation, often leading to conflict, inefficiency, and weakened regulatory outcomes.

The continued relevance of customary marine tenure, however, challenges the assumption that effective governance must be centralised. In many instances, these systems have demonstrated a capacity to regulate resource use more sustainably and equitably than formal mechanisms. Their emphasis on collective responsibility, social accountability, and ecological balance aligns closely with contemporary principles of environmental governance and climate justice.[74] Moreover, their adaptability allows them to respond to changing environmental conditions in ways that rigid statutory frameworks may not.

Recognising customary marine tenure as a legal system requires a shift in legal consciousness. It demands that law be understood not only as a product of legislative enactment but also as a reflection of social practice and community authority. Such recognition does not imply the abandonment of state regulation; rather, it calls for a more nuanced approach in which different systems of governance are integrated and coordinated.

In the context of the Niger Delta, this would involve acknowledging the legitimacy of customary institutions, incorporating their norms into formal policy frameworks, and creating mechanisms for collaboration between state agencies and local communities.

Ultimately, indigenous governance in the Niger Delta illustrates the potential of customary marine tenure as a viable and effective system of law. It demonstrates that sustainable resource management is not solely the domain of formal institutions, but can also emerge from community-based practices that are deeply attuned to local realities. By bringing these systems into the centre of legal analysis, rather than leaving them at the margins, it becomes possible to envision a more inclusive and resilient model of ocean governance in Nigeria.

Normative Principles: Community Authority, Resource Stewardship, and Intergenerational Responsibility

At the heart of customary marine tenure in the Niger Delta lies a set of normative principles that give structure, legitimacy, and direction to community-based governance. These principles—community authority, resource stewardship, and intergenerational responsibility—are not abstract ideals but operational rules that shape how marine resources are accessed, used, and preserved. Together, they constitute the ethical and legal foundation upon which customary systems are built, and they offer important insights into alternative approaches to ocean governance that are both sustainable and just.[75]

Community authority is the first and most fundamental of these principles. Under customary marine tenure, authority over marine spaces is not vested in a distant central institution but is embedded within the community itself. This authority is exercised through recognised traditional institutions, such as councils of elders, chiefs, or lineage heads, who derive their legitimacy from social acceptance and historical continuity.[76] Unlike state-based authority, which is often impersonal and bureaucratic, community authority is relational. It is grounded in shared identity, mutual obligation, and a collective understanding of rights and responsibilities. This proximity to the governed enhances both compliance and accountability, as those who make decisions are directly answerable

[73] Brian Z Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press 2001).

[74] Food and Agriculture Organization, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (FAO 2012).

[75] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press 1990).

[76] G B A Elias, *The Nature of African Customary Law* (Manchester University Press 1956).

to those affected by them.

Closely linked to community authority is the principle of resource stewardship. Customary marine tenure systems do not conceive of marine resources as commodities to be exploited without restraint. Rather, they are regarded as communal assets to be managed carefully for the benefit of the entire community. This perspective fosters a sense of custodianship rather than ownership, encouraging practices that prioritise sustainability over short-term gain.[77] Rules governing fishing methods, seasonal access, and the protection of sensitive areas are often designed to maintain ecological balance and prevent overexploitation. In many cases, these rules are informed by detailed local knowledge of environmental conditions, allowing communities to respond effectively to changes in resource availability.

The principle of intergenerational responsibility further reinforces this stewardship ethic. Customary systems recognise that the use of marine resources in the present must not compromise their availability for future generations. This forward-looking orientation is embedded in both the content and the enforcement of customary rules. Practices that threaten long-term sustainability—such as the use of destructive fishing techniques or the overharvesting of critical species—are typically prohibited or strictly regulated.[78] By linking present actions to future consequences, intergenerational responsibility introduces a temporal dimension to governance that is often lacking in formal regulatory systems.

These principles are mutually reinforcing. Community authority provides the institutional framework through which rules are developed and enforced; resource stewardship defines the substantive goals of those rules; and intergenerational responsibility ensures that governance decisions are oriented toward long-term sustainability. Together, they create a coherent system that is capable of managing marine resources in a manner that is both ecologically sound and socially legitimate.

From a legal perspective, these normative principles challenge conventional assumptions about the nature and source of law. They demonstrate that effective governance does not necessarily require centralised control or formal codification. Instead, it can emerge from socially embedded practices that are responsive to local conditions and grounded in shared values. This insight is particularly relevant in the context of environmental governance, where the complexity and variability of ecological systems often demand flexible and context-specific approaches.[79]

In contrast, the dominant state-centric model of ocean governance in Nigeria tends to prioritise uniform regulation and administrative control, often without sufficient regard for local variations or community dynamics. While such an approach may offer clarity and consistency, it can also result in rigid policies that fail to address the specific needs and realities of different coastal environments. The exclusion of customary principles from formal governance not only limits the effectiveness of regulatory frameworks but also undermines the legitimacy of the law in the eyes of those it seeks to regulate.

Integrating these normative principles into the formal legal framework would require a deliberate and thoughtful process of reform. It would involve recognising the authority of community institutions, incorporating stewardship-based rules into statutory provisions, and embedding intergenerational considerations into policy design. Such integration would not only enhance the sustainability of marine resource management but also align Nigeria's ocean governance system with broader principles of climate justice and environmental responsibility.

Ultimately, the normative principles of customary

[77] Fikret Berkes, Sacred Ecology (3rd edn, Routledge 2012).

[78] Food and Agriculture Organization, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012).

[79] Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 *Sydney Law Review* 375.

marine tenure offer more than a critique of existing governance models; they provide a constructive foundation for reimagining the law. By drawing on these principles, it is possible to develop a more inclusive, adaptive, and ethically grounded approach to ocean governance—one that reflects both the realities of coastal life and the demands of a changing climate.

5. Climate Justice Implications

Environmental Injustice in Coastal Communities

The intersection between ocean governance and climate change in Nigeria reveals a deeply troubling pattern of environmental injustice, particularly within coastal communities of the

troubling pattern of environmental injustice, particularly within coastal communities of the Niger Delta. These communities occupy a paradoxical position: they are located in one of the most resource-rich regions of the country, yet they experience some of the most severe environmental degradation and socio-economic marginalisation.[80] This contradiction is not accidental. It is the product of a governance framework that has historically prioritised resource extraction over environmental protection and community welfare.

Environmental injustice, in this context, refers to the unequal distribution of environmental harms and benefits, as well as the unequal access to decision-making processes that shape those outcomes. Coastal communities in Nigeria are disproportionately exposed to environmental risks, including oil spills, gas flaring, water pollution, and habitat destruction.[81] These risks are further intensified by the impacts of climate change, which exacerbate existing vulnerabilities through rising sea levels, increased flooding, and the degradation of marine ecosystems. The cumulative effect is a layered form of harm in which historical exploitation and contemporary climate pressures reinforce one another.

One of the most significant aspects of this injustice is the erosion of livelihoods. Many coastal communities depend on fishing and small-scale marine resource use as their primary means of survival. However, environmental degradation has led to declining fish stocks, contaminated water bodies, and the loss of critical habitats such as mangroves.[82] These changes not only reduce economic opportunities but also threaten food security and cultural identity. For communities whose ways of life are closely tied to the marine environment, the loss of ecological integrity represents a profound disruption that extends beyond material deprivation at the local level.

Decisions regarding resource extraction, environmental regulation, and development projects are often made without adequate consultation or consent from the communities most directly affected.[83] This exclusion undermines procedural justice and perpetuates a system in which those who bear the greatest burdens have the least voice.

Legal remedies for environmental harm, while theoretically available, are often difficult to access in practice. Litigation can be costly, time-consuming, and procedurally complex, placing it beyond the reach of many affected individuals and communities.[84] Even where favourable judgments are obtained, enforcement remains a significant challenge. This gap between legal rights and practical outcomes contributes to a broader sense of injustice and disempowerment, further eroding trust in formal institutions.

Climate change adds a new dimension to these existing inequalities. Coastal communities are particularly vulnerable to its impacts due to their geographic location and reliance on natural resources. Rising sea levels threaten to submerge

[80] United Nations Development Programme, *Niger Delta Human Development Report* (UNDP 2006).

[81] United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011).

[82] Food and Agriculture Organization, *The State of World Fisheries and Aquaculture 2022: Towards Blue Transformation* (FAO 2022).

[83] African Commission on Human and Peoples' Rights, *SERAC v Nigeria* (Communication 155/96).

[84] *Gbemre v Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC 2005).

low-lying settlements, while increased storm intensity and flooding disrupt infrastructure and displace populations.[85] These impacts are not only environmental but also social and economic, affecting housing, health, education, and overall well-being. In many cases, communities are forced to adapt without adequate support, relying on limited resources and informal coping strategies.

From a climate justice perspective, this situation raises critical questions about responsibility and fairness. Nigeria, as a developing country, contributes relatively little to global greenhouse gas emissions compared to industrialised nations. Yet within Nigeria itself, the distribution of climate impacts is highly uneven. Coastal communities, which have contributed least to both global emissions and national resource extraction policies, are among those most severely affected.[86] This internal disparity mirrors broader global inequalities and underscores the need for justice-oriented governance at both national and international levels.

Addressing environmental injustice in coastal communities requires more than technical solutions. It demands a fundamental reorientation of governance priorities toward equity, inclusion, and sustainability. This includes recognising the rights and knowledge of local communities, strengthening mechanisms for participation and accountability, and ensuring that environmental policies are responsive to the needs of those most affected. Customary marine tenure systems, with their emphasis on community authority and ecological stewardship, offer valuable insights into how such a reorientation might be achieved.

Ultimately, environmental injustice in Nigeria's coastal regions is not merely a by-product of development; it is a reflection of deeper structural imbalances within the legal and institutional framework of ocean governance. Confronting this injustice requires a willingness to question existing assumptions, redistribute authority, and embrace more inclusive forms of governance. Only then can the promise of climate justice be meaningfully realised for those who stand at the frontline of environmental change.

Exclusion of Indigenous Systems

A central dimension of environmental injustice in Nigeria's coastal regions is the systematic exclusion of indigenous governance systems—particularly customary marine tenure—from the formal legal and institutional framework of ocean governance. This exclusion is not merely an incidental feature of the legal system; it is a structural characteristic that reflects deeper assumptions about the nature of law, authority, and legitimacy.[87] By privileging state-based regulation as the primary, and often exclusive, source of legal authority, the existing framework marginalises alternative systems of governance that have historically played a crucial role in managing marine resources.

The exclusion of indigenous systems operates at multiple levels. At the legislative level, there is little or no formal recognition of customary marine tenure within Nigeria's statutory regime governing marine and coastal resources. Laws relating to territorial waters, offshore resources, and environmental protection are framed in a manner that assumes state ownership and control, leaving no meaningful space for the recognition of community-based rights or authority.[88] This absence of legal recognition effectively renders customary systems invisible within the formal legal order, despite their continued relevance in practice.

At the institutional level, decision-making processes are largely centralised within federal agencies and regulatory bodies, with limited mechanisms for incorporating indigenous knowledge or community perspectives. Consultations, where they occur, are often procedural rather than substantive, serving to legitimise pre-determined outcomes rather than to

[85] Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability* (CUP 2022).

[86] Paris Agreement (2015) art 2(2); principle of equity and common but differentiated responsibilities.

[87] Tamanaha (n 73).

[88] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 44(3); Territorial Waters Act; Exclusive Economic Zone Act.

facilitate genuine participation.[89] As a result, indigenous communities are frequently positioned as passive recipients of policy decisions rather than as active contributors to governance. This dynamic not only undermines procedural justice but also weakens the effectiveness of regulatory interventions by excluding valuable local knowledge.

The marginalisation of indigenous systems is further reinforced by judicial and administrative practices that prioritise formal legal norms over customary ones. While Nigerian law does recognise customary law in certain contexts—particularly in matters of land and personal status—this recognition is often subject to limitations, including requirements that such customs be proven, not repugnant to natural justice, and not incompatible with statutory law.[90] In the context of marine governance, these conditions are rarely satisfied, not because customary systems lack coherence, but because the legal framework does not provide adequate pathways for their validation and integration. Consequently, customary marine tenure remains largely outside the scope of judicial protection.

The consequences of this exclusion are both practical and normative. Practically, it leads to a misalignment between formal regulations and local practices, resulting in conflicts, non-compliance, and reduced effectiveness of governance measures. Communities may continue to operate according to customary norms, even when these norms are not recognised by state law, creating a dual system of governance that lacks coordination.[91] This fragmentation undermines the ability of the legal system to achieve its objectives and contributes to the persistence of environmental challenges.

Normatively, the exclusion of indigenous systems raises serious concerns about justice and legitimacy. It reflects a hierarchical conception of law in which certain forms of knowledge and authority are privileged over others. Indigenous practices, despite their demonstrated capacity for sustainable resource management, are often dismissed as informal or outdated.[92] This not only undermines the dignity of the communities that rely on these systems but also perpetuates a form of epistemic injustice, in which certain ways of knowing are systematically devalued or ignored.

In the context of climate change, the exclusion of indigenous systems becomes even more problematic. Effective adaptation requires the integration of diverse knowledge systems and the active participation of local communities. Customary marine tenure, with its emphasis on ecological awareness and community-based regulation, offers valuable tools for building resilience and responding to environmental change.[93] By excluding these systems, the current governance framework limits its own capacity to address the challenges posed by climate variability and uncertainty.

Reversing this exclusion requires a deliberate shift in legal and institutional thinking. It involves recognising customary marine tenure not as a peripheral or subordinate system, but as a legitimate and valuable component of ocean governance. This recognition must be reflected in legislation, policy design, and institutional practice. It also requires the development of mechanisms for dialogue and coordination between state and customary systems, ensuring that both can contribute to the governance of marine resources in a complementary and mutually reinforcing manner.

Ultimately, the exclusion of indigenous systems is not simply a legal oversight; it is a manifestation of deeper structural biases within the governance framework. Addressing this issue is essential not

[89] O Fagbohun, *Environmental Law in Nigeria* (Malthouse Press 2010).

[90] Evidence Act 2011, s 18; see also the repugnancy and incompatibility tests in Nigerian customary law jurisprudence.

[91] John Griffiths, 'What is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1.

[92] Nancy Fraser, 'From Redistribution to Recognition? Dilemmas of Justice in a "Post-Socialist" Age' (1995) 212 *New Left Review* 68.

[93] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press 2022).

only for improving the effectiveness of ocean governance but also for advancing broader goals of equity, inclusion, and climate justice. By bringing customary marine tenure into the centre of legal discourse, it becomes possible to move toward a more balanced and responsive system—one that recognises the plurality of legal orders and harnesses their collective strengths for the benefit of both people and the environment.

Link between Governance Failure and Climate Harm

The relationship between governance failure and climate harm in Nigeria's coastal regions is neither accidental nor indirect; it is structural and deeply embedded within the design and operation of the existing ocean governance framework. Where governance systems fail to regulate resource use effectively, enforce environmental standards, or incorporate local knowledge, they create conditions that not only permit environmental degradation but also intensify the impacts of climate change.[94] In this sense, climate harm in coastal Nigeria cannot be understood solely as a consequence of global environmental processes; it must also be seen as a product of domestic legal and institutional shortcomings.

One of the clearest manifestations of this link is the persistence of environmental degradation in the Niger Delta. As previously noted, decades of oil exploration and production have resulted in widespread pollution of land and water, destruction of mangrove ecosystems, and the loss of biodiversity.[95] These environmental changes have significantly reduced the resilience of coastal ecosystems, making them more vulnerable to climate-related stresses such as sea-level rise, increased storm intensity, and changing rainfall patterns. Healthy ecosystems often serve as natural buffers against climate impacts; when they are degraded, the capacity of communities to withstand environmental shocks is correspondingly weakened.

Governance failure also contributes to climate harm through inadequate regulation and enforcement. Where environmental laws exist but are poorly implemented, harmful practices such as gas flaring, oil spills, and illegal resource extraction continue with limited accountability.[96] These activities not only contribute directly to environmental degradation but also exacerbate climate change by increasing greenhouse gas emissions and undermining carbon sinks such as mangrove forests. The failure to enforce existing laws thus transforms what could have been manageable environmental risks into more severe and long-lasting forms of harm.

Another important dimension of this relationship is the lack of adaptive governance. Climate change introduces uncertainty and variability into environmental systems, requiring governance frameworks that are flexible, responsive, and capable of learning from experience. However, Nigeria's state-centric model, with its emphasis on centralised control and rigid regulatory structures, is often ill-equipped to respond to rapidly changing conditions.[97] Policies are frequently designed without sufficient input from local communities, whose knowledge of environmental patterns could enhance adaptive capacity. As a result, adaptation measures may be poorly targeted, ineffective, or even counterproductive.

The exclusion of customary marine tenure systems further intensifies this problem. As discussed earlier, these systems are often grounded in detailed ecological knowledge and are capable of adjusting to environmental changes through locally appropriate practices. By failing to integrate such systems into formal governance, the legal framework deprives itself of a valuable source of resilience.[98] This exclusion not only weakens the

[94] Intergovernmental Panel on Climate Change, Climate Change 2022: Impacts, Adaptation and Vulnerability (Cambridge University Press 2022).

[95] United Nations Environment Programme, Environmental Assessment of Ogoniland (UNEP 2011).

[96] Gbemre v Shell Petroleum Development Company Nigeria Ltd.

[97] Koko Warner and others, 'Climate Change, Environmental Degradation and Migration' (United Nations University Policy Report, 2009).

[98] Berkes (n 77).

overall effectiveness of governance but also contributes to a form of climate injustice, in which communities are denied the tools and authority needed to respond to the challenges they face.

The socio-economic consequences of this governance failure are equally significant. As environmental conditions deteriorate, livelihoods are disrupted, food security is threatened, and communities are forced to adopt coping strategies that may be unsustainable in the long term. In some cases, this leads to migration, social conflict, and increased pressure on already fragile ecosystems.[99] These outcomes illustrate how governance failure can transform environmental challenges into broader social crises, amplifying the human impact of climate change.

From a legal perspective, the link between governance failure and climate harm underscores the importance of accountability and reform. It highlights the need for governance systems that are not only formally robust but also functionally effective. This requires a shift from a narrow focus on control and regulation toward a more holistic approach that incorporates environmental protection, community participation, and adaptive capacity. It also calls for stronger mechanisms of oversight, transparency, and enforcement to ensure that legal standards are translated into practical outcomes.

Importantly, addressing this link is not solely a matter of technical improvement; it is a matter of justice. Where governance failures contribute to climate harm, they do so in ways that disproportionately affect vulnerable communities. These communities, which often have the least capacity to adapt, bear the greatest burden of environmental degradation and climate change.[100] Ensuring that governance systems do not perpetuate or exacerbate these inequalities is therefore a central component of climate justice.

In this context, the integration of customary marine tenure into the formal legal framework offers a promising pathway for reform. By incorporating community-based governance systems that are responsive to local conditions and grounded in ecological knowledge, it is possible to enhance both the effectiveness and the fairness of ocean governance. Such integration would not eliminate all governance challenges, but it would represent a significant step toward a more resilient and just system—one that is better equipped to address the complex and interconnected nature of climate harm in Nigeria's coastal regions.

6. Integrating Customary Marine Tenure into Formal Law

Legal Pathways for Recognition

The integration of customary marine tenure into Nigeria's formal legal framework represents both a necessary and a transformative step toward achieving sustainable and just ocean governance. As the preceding analysis has demonstrated, the exclusion of indigenous governance systems has contributed significantly to environmental degradation, weakened regulatory effectiveness, and deepened climate injustice in coastal communities. Addressing these challenges requires more than rhetorical acknowledgment of customary practices; it demands concrete legal pathways through which such systems can be formally recognised, protected, and operationalised within the broader governance structure.[101]

One of the most direct pathways for recognition lies in legislative reform. Existing statutes governing marine resources and environmental protection can be amended to explicitly acknowledge the role of customary marine tenure in coastal governance. Such recognition would involve defining the scope of customary rights, identifying the communities

[99] United Nations Development Programme, *Human Development Report 2020: The Next Frontier—Human Development and the Anthropocene* (UNDP 2020).

[100] David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2007).

[101] Food and Agriculture Organization, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (FAO 2012).

entitled to exercise them, and establishing procedures for their documentation and enforcement.[102] Importantly, this process must be participatory, ensuring that communities themselves are actively involved in articulating the content and boundaries of their customary systems. Without such involvement, there is a risk that formal recognition may distort or undermine the very practices it seeks to preserve.

In addition to legislative reform, constitutional interpretation offers another avenue for integrating customary marine tenure. Although the Constitution does not explicitly address marine customary rights, its provisions on environmental protection and community welfare can be interpreted in a manner that supports the inclusion of indigenous governance systems. Section 20, which mandates the State to protect and improve the environment, can be read as encompassing a duty to engage with and support community-based mechanisms of environmental stewardship.[103] Similarly, fundamental rights provisions—particularly those relating to life and human dignity—have been judicially interpreted to include environmental dimensions, as seen in cases such as *Gbemre v Shell*.[104] These interpretations provide a doctrinal basis for recognising customary marine tenure as part of a broader framework of environmental rights and responsibilities.

Judicial development of the law also presents a significant opportunity for advancing recognition. Courts can play a proactive role by acknowledging the validity of customary marine practices in relevant disputes, particularly where such practices are clearly established and consistent with principles of equity and sustainability.[105] By incorporating customary norms into judicial reasoning, courts can gradually build a body of jurisprudence that affirms the legal status of indigenous governance systems. This approach aligns with the broader tradition of common law development, in which judicial decisions contribute to the evolution of legal principles over time.

Administrative and policy reforms are equally important. Government agencies responsible for marine and environmental regulation can adopt frameworks that incorporate customary marine tenure into their operational processes. This may include the establishment of co-management arrangements, in which state authorities and community institutions share responsibility for resource management.[106] Such arrangements can enhance compliance, improve resource monitoring, and foster a sense of shared ownership over governance outcomes. They also provide a practical mechanism for integrating local knowledge into decision-making, thereby enhancing the adaptability and effectiveness of regulatory interventions.

International legal frameworks further support the recognition of customary tenure systems. Instruments such as the FAO Voluntary Guidelines on the Responsible Governance of Tenure emphasise the importance of recognising and protecting customary rights as part of sustainable resource management.[107] While these instruments are not legally binding, they carry significant normative weight and can guide domestic reform efforts. By aligning national law with international best practices, Nigeria can strengthen its commitment to both environmental sustainability and human rights.

However, the process of integration must be approached with caution and sensitivity. Customary systems are dynamic and context-specific, and their formalisation may introduce challenges related to standardisation, documentation, and potential internal inequalities.[108] It is therefore essential that legal recognition does not impose rigid structures

[102] Olanrewaju Fagbohun, *Environmental Law in Nigeria* (Malthouse Press 2010).

[103] Constitution of the Federal Republic of Nigeria 1999, ss 20.

[104] Gbemre v Shell Petroleum Development Company Nigeria Ltd.

[105] Elias (n 76).

[106] Ostrom (n 75).

[107] FAO (n 74).

[108] Tamanaha (n 73).

that undermine the flexibility and adaptability of customary practices. Instead, the goal should be to create a framework that respects the integrity of these systems while providing the legal support necessary for their effective operation within a modern governance context.

Ultimately, the integration of customary marine tenure into formal law is not merely a technical exercise; it is a normative commitment to a more inclusive and equitable model of governance. It reflects an acknowledgment that effective regulation cannot be achieved through centralised authority alone, but requires the participation and recognition of all relevant actors. By creating legal pathways for recognition, Nigeria has the opportunity to transform its ocean governance system into one that is not only more effective but also more just and responsive to the needs of its coastal communities.

Policy and Institutional Reforms

While legal recognition of customary marine tenure is essential, it is not sufficient on its own to transform ocean governance in Nigeria. Effective integration requires a corresponding shift in policy orientation and institutional design. In other words, the law must be supported by governance structures that are capable of operationalising pluralism in practice. Without such reforms, recognition risks remaining symbolic rather than substantive.[109]

A central element of this transformation is the development of inclusive policy frameworks that explicitly incorporate community-based governance into marine resource management. Existing policies in Nigeria tend to adopt a top-down approach, in which objectives are defined at the national level and implemented through centralised agencies. While this model may facilitate coordination, it often fails to capture the diversity of local conditions and the knowledge systems that exist within coastal communities.[110] A reformed policy framework should therefore prioritise decentralisation, enabling communities to participate meaningfully in decision-making processes and to exercise a degree of autonomy over local resource management.

Institutionally, this shift can be achieved through the establishment of co-management regimes. Co-management involves the sharing of authority and responsibility between state institutions and local communities, creating a collaborative framework for governance.[111] Under such arrangements, community representatives participate alongside government officials in the formulation of rules, monitoring of compliance, and resolution of disputes. This approach not only enhances the legitimacy of governance decisions but also improves their effectiveness by drawing on local knowledge and fostering a sense of ownership among stakeholders.

The success of co-management, however, depends on the capacity of both state institutions and community structures. On the part of the State, there is a need to strengthen institutional coordination and reduce fragmentation among agencies responsible for marine governance. As previously noted, the current system is characterised by overlapping mandates and limited cooperation, which undermines policy coherence and implementation.[112] Establishing clear lines of authority, improving inter-agency communication, and creating integrated management frameworks are essential steps toward addressing these challenges.

At the community level, capacity-building initiatives are equally important. While customary systems possess inherent strengths, they may also face challenges related to resource constraints, internal governance, and external pressures. Supporting these systems through training, financial resources, and technical assistance can enhance their ability to participate effectively in co-

[109] Ostrom (n 75).

[110] Fagbohun (n 102).

[111] Derek Armitage and others, 'Adaptive Co-Management for Social–Ecological Complexity' (2009) 12 *Frontiers in Ecology and the Environment* 95.

[112] N Oluwaseun, 'Legal and Institutional Framework for Marine Environmental Protection in Nigeria' (2016).

management arrangements.[113] Such support should be designed in a manner that respects the autonomy and cultural integrity of community institutions, avoiding the imposition of external models that may disrupt existing practices.

Another critical area of reform is the incorporation of customary knowledge into environmental monitoring and data collection. Traditional ecological knowledge, which is often accumulated over generations, provides valuable insights into environmental patterns, resource dynamics, and the impacts of human activity.[114] Integrating this knowledge into formal monitoring systems can improve the accuracy and relevance of environmental assessments, thereby informing more effective policy responses. It also reinforces the recognition of indigenous communities as knowledge holders and active participants in governance.

Transparency and accountability must also be strengthened as part of institutional reform. Mechanisms for public participation, access to information, and grievance redress should be expanded to ensure that coastal communities can engage meaningfully with governance processes and hold decision-makers accountable.[115] This includes simplifying procedures for accessing justice, reducing the cost of litigation, and enhancing the responsiveness of administrative bodies to community concerns. By improving accountability, these measures can help to rebuild trust between communities and state institutions, which is essential for the success of any governance framework.

Importantly, policy and institutional reforms must be aligned with broader climate governance strategies. As Nigeria develops and implements policies related to climate adaptation and mitigation, it is essential that these policies reflect the realities of coastal communities and incorporate the principles of climate justice.[116] This requires integrating customary marine tenure into national climate plans, recognising the role of community-based governance in building resilience, and ensuring that adaptation measures are designed in consultation with those most affected.

Ultimately, the reform of policy and institutions represents a critical bridge between legal recognition and practical implementation. It translates abstract principles into concrete actions, creating the conditions under which a pluralistic model of ocean governance can function effectively. By embracing inclusive, coordinated, and adaptive approaches, Nigeria has the opportunity to develop a governance system that is better equipped to address the complex challenges of marine resource management in an era of environmental change.

Comparative Insights (Brief Reference)

A comparative perspective provides valuable insight into how customary marine tenure can be effectively integrated into formal legal systems. While Nigeria's ocean governance framework has largely maintained a rigid state-centric orientation, other jurisdictions have begun to recognise and incorporate indigenous governance systems in ways that enhance both legal legitimacy and environmental sustainability. Among the most instructive examples is New Zealand, where Māori customary rights and environmental principles have been progressively integrated into national law and policy.[117]

In New Zealand, the relationship between the State and indigenous Māori communities has undergone significant transformation, particularly in the context of natural resource governance. This transformation is grounded in the recognition of the Treaty of Waitangi as a foundational document that affirms the rights of Māori as tangata whenua (people of the land).[118] Over time, this recognition has been translated into legislative and institutional

[113] FAO (n 74).
[114] Berkes (n 77).
[115] Amartya Sen, *The Idea of Justice* (Penguin 2009).
[116] Paris Agreement, art 7.
[117] Jacinta Ruru, 'Indigenous Peoples and Freshwater: Māori Rights and Interests in Aotearoa New Zealand' (2018) *Journal of Water Law*.
[118] Treaty of Waitangi.

reforms that acknowledge Māori authority, incorporate customary practices, and promote co-governance arrangements in the management of natural resources, including marine environments.

One of the most notable developments in this regard is the recognition of legal personhood for natural entities, such as the Whanganui River under the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.[119] This legislation reflects a profound shift in legal thinking, moving away from a purely anthropocentric model of governance toward one that recognises the intrinsic value of natural systems. It also embodies Māori cosmological perspectives, in which the river is regarded as a living ancestor rather than a mere resource. While this model is not directly transferable to Nigeria, it illustrates the potential for legal systems to accommodate alternative ontologies and governance principles.

In the marine context, New Zealand has also developed mechanisms for recognising customary fishing rights and enabling Māori participation in resource management. The Fisheries (Kaimoana Customary Fishing) Regulations 1998, for example, provide for the identification of customary fishing areas and the appointment of local guardians (kaitiaki) who are responsible for managing those areas in accordance with Māori traditions.[120] These arrangements represent a form of legal pluralism in practice, where state law and customary systems operate in a coordinated and mutually reinforcing manner.

The significance of these developments lies not in their specific content, but in the principles they embody. First, they demonstrate that the recognition of indigenous governance systems is compatible with modern legal frameworks. Secondly, they show that such recognition can enhance the effectiveness of resource management by incorporating local knowledge and fostering community engagement. Thirdly, they highlight the importance of legal and institutional innovation in addressing complex environmental challenges.

For Nigeria, the relevance of this comparative experience lies in its potential to inform domestic reform efforts. While the historical, cultural, and legal contexts differ, the underlying challenge—how to reconcile state authority with indigenous governance—remains similar. The New Zealand example suggests that meaningful integration is possible where there is political will, legal creativity, and a commitment to justice. It also underscores the importance of recognising indigenous systems not as obstacles to development, but as valuable partners in governance.

However, it is impotant to approach comparative analysis with caution. Legal transplants must be adapted to local conditions, taking into account the specificities of Nigeria's legal system, socio-political dynamics, and cultural diversity.[121] What works in one jurisdiction may not be directly applicable in another, and attempts to replicate foreign models without proper contextualisation may lead to unintended consequences. The goal, therefore, is not to import solutions wholesale, but to draw inspiration from comparative experiences and to develop context-appropriate reforms.

In this regard, the Nigerian legal system already contains elements that could support the integration of customary marine tenure. The recognition of customary law in other areas of law, the constitutional commitment to environmental protection, and the growing emphasis on community participation in development policies all provide a foundation upon which reform can be built.[122] By building on these existing elements and learning from comparative examples, Nigeria can move toward a more inclusive and adaptive model of ocean governance.

Ultimately, the comparative experience reinforces

[119] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

[120] Fisheries (Kaimoana Customary Fishing) Regulations 1998 (SR 1998/xxx) (NZ).

[121] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993).

[122] Constitution of the Federal Republic of Nigeria 1999, s 20.

the central argument of this paper: that the integration of customary marine tenure into formal law is both feasible and desirable. It shows that legal systems can evolve to accommodate pluralism, and that doing so can lead to more effective and just governance outcomes. For Nigeria, embracing this possibility represents an important step toward addressing the challenges of environmental degradation and climate change in its coastal regions.

7. Conclusion and Recommendations

The analysis undertaken in this paper has demonstrated that Nigeria's current model of ocean governance, while legally structured and institutionally elaborate, remains fundamentally limited by its state-centric orientation. The concentration of authority within federal institutions, reinforced by constitutional and statutory frameworks, has produced a system that is administratively coherent but substantively inadequate in addressing the complex realities of coastal environments.[123] This inadequacy is most visible in the Niger Delta, where environmental degradation, economic marginalisation, and climate vulnerability converge to reveal the shortcomings of a governance model that prioritises control over inclusivity.

A central argument of this paper has been that the exclusion of customary marine tenure from the formal legal framework constitutes a critical gap in Nigeria's approach to ocean governance. Customary marine tenure, as shown, is not merely a cultural artefact but a functioning system of legal ordering, grounded in community authority, ecological stewardship, and intergenerational responsibility. Its continued marginalisation reflects a deeper structural bias within the legal system—one that privileges state-based norms while overlooking the value of indigenous knowledge and practice.[124] This exclusion not only weakens the effectiveness of governance but also perpetuates forms of environmental and climate injustice.

The link between governance failure and climate harm further underscores the urgency of reform. Where legal and institutional systems fail to regulate environmental activities effectively or to incorporate local knowledge, they create conditions that exacerbate the impacts of climate change. Coastal communities, already vulnerable due to their geographic location and socio-economic conditions, bear a disproportionate share of these impacts.[125] Addressing this imbalance requires a shift in both legal thinking and governance practice—one that places justice, sustainability, and participation at the centre of decision-making.

In light of these findings, this paper advances a number of key recommendations aimed at reorienting ocean governance in Nigeria toward a more inclusive and effective model.

First, there is a need for explicit legal recognition of customary marine tenure within Nigeria's statutory framework. This recognition should go beyond symbolic acknowledgment to include clear provisions defining the rights and responsibilities of communities, as well as mechanisms for their enforcement. Such reform would provide a legal foundation for integrating customary systems into formal governance and would enhance the legitimacy of regulatory frameworks.

Secondly, institutional reforms should be undertaken to establish co-management arrangements between state agencies and coastal communities. These arrangements would facilitate shared decision-making, improve compliance, and enable the incorporation of local knowledge into resource management. By distributing authority more equitably, co-management can help bridge the gap between formal law and lived reality.

Thirdly, policy frameworks should be restructured to prioritise decentralisation and community participation. This includes creating platforms for meaningful engagement, ensuring access to information, and strengthening mechanisms for accountability and grievance redress. Participation

[123] Constitution of the Federal Republic of Nigeria 1999, ss 20, 44(3)
[124] Tamanaha (n 73).
[125] IPCC (n 45).

must be substantive rather than procedural, allowing communities to influence outcomes rather than merely respond to them.

Fourthly, customary ecological knowledge should be integrated into environmental monitoring and climate adaptation strategies. Recognising the value of indigenous knowledge systems can enhance the accuracy and effectiveness of policy responses, particularly in the face of environmental uncertainty. It also reinforces the principle of recognitional justice, ensuring that diverse forms of knowledge are respected and utilised.

Fifthly, capacity-building initiatives should be implemented to support both state institutions and community governance structures. For state agencies, this involves improving coordination, technical expertise, and enforcement capabilities. For communities, it includes providing resources, training, and institutional support to enable effective participation in governance processes.

Finally, Nigeria should align its domestic legal framework with international best practices on tenure governance and climate justice. Instruments such as the FAO Voluntary Guidelines and the Paris Agreement provide valuable guidance for developing inclusive and sustainable governance systems.[126] By incorporating these principles into national law and policy, Nigeria can strengthen its commitment to both environmental protection and human rights.

In conclusion, the transformation of ocean governance in Nigeria requires more than incremental adjustments; it demands a fundamental rethinking of the relationship between law, society, and the environment. Legal pluralism offers a compelling framework for this transformation, providing a basis for recognising and integrating multiple systems of governance. By embracing this approach and incorporating customary marine tenure into the formal legal order, Nigeria has the opportunity to develop a governance system that is not only more effective but also more just, resilient, and responsive to the challenges of the present and the uncertainties of the future.

[126] Paris Agreement (n 116).

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