EMBEDDING INCLUSION IN CLIMATE LAW ACROSS SUB-SAHARAN AFRICA: UBUNTU, DECOLONIALITY AND PRACTICAL INSTRUMENTS' LESSONS FROM NIGERIA AND KENYA

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Abstract

Climate change in Sub-Saharan Africa (SSA) intensifies social inequities, disproportionately harming women, Indigenous peoples, rural communities, youth and persons with disabilities (PWDs) who are frequently excluded from decision-making. This paper contends that legal frameworks must transcend generic rights language and embed African values of solidarity, communal responsibility, and justice. Drawing on Ubuntu, decolonial critique, feminist environmental justice, and legal pluralism, it derives normative principles for inclusive climate law. A qualitative comparative analysis of Nigeria and Kenya finds progressive statutory language in both but implementation gaps: Kenya's climate statute incorporates a two-thirds gender principle and an indigenous knowledge representative, whereas Nigeria's arrangements enumerate stakeholder categories without quotas, binding free, prior, informed consent (FPIC), or robust community consent mechanisms. Most provisions remain hortatory rather than enforceable. The paper proposes model clauses and policy instruments—quotas, FPIC, gender and disability

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impact assessments, enforceable accountability and subnational capacity-building—to operationalize intersectional inclusion in climate governance across Africa.

Keywords: Climate change law; Inclusion; Environmental justice; Sub-Saharan Africa.

1.0. Introduction

SSA faces overlapping crises of climate change and biodiversity loss.[1] Intensifying droughts, floods, land degradation, deforestation and species decline disproportionately burden socially marginalised groups—women, youth, Indigenous and ethnic minorities, PWDs, and the rural poor—while governance arrangements too often exclude these groups from decision-making.[2] This exclusion is not merely unjust: it also undermines ecological effectiveness and long-term resilience.[3] Studies on community-based conservation and participatory planning show that devolved rights and meaningful inclusion produce better

[1] Colin A Chapman, Katherine Abernathy, Lauren J Chapman, Colleen Downs, Edu O Effiom, Jan F Gogarten, Martin Golooba and others, 'The future of sub-Saharan Africa's biodiversity in the face of climate and societal change' (2022) 10 Frontiers in Ecology and Evolution 790552.

[2] Opeyemi A Gbadegesin, 'Gendered Implications of Climate Change: Empowering Women in Climate Law and Policymaking in Nigeria' (2025) 16(2) The Journal of Sustainable Development, Law and Policy 154 https://doi.org/10.4314/jsdlp.v16i2.8.

[3] Charissa Bosma and Lars Hein, 'The climate and land use change nexus: Implications for designing adaptation and conservation investment strategies in Sub-Saharan Africa' (2023) 31(5) Sustainable Development 3811–3830.

social and ecological outcomes;[4] conversely, exclusion commonly fuels conflict, undermines projects and dissipates public investment.[5]

For present purposes "inclusion" denotes two related obligations: (1) procedural voice—meaningful, accessible opportunities for named groups to participate in planning and decision-making; [6] and (2) enforceable distributive outcomes—statutory guarantees that benefits, compensation and resource access are equitably distributed to those most affected.[7] This paper argues that African climate law must move beyond symbolic participation clauses and generic non-discrimination language and instead embed intersectional inclusion as a structural, enforceable feature of statutory design. Concretely, climate and environmental statutes should require instruments such as reserved seats and quota rules, culturally appropriate FPIC processes, mandatory gender and vulnerability impact assessments, protected funding streams, procedural accommodations, and broad legal standing and remedies to enforce inclusion.

To justify and operationalise this claim, the paper synthesises four African-informed normative frameworks—Ubuntu (communal

[4] Isabel Ruiz-Mallén and Esteve Corbera, 'Community-based conservation and traditional ecological knowledge: implications for social-ecological resilience' (2013) 18(4) Ecology and Society; Brandie Fariss, Nicole DeMello, Kathryn A Powlen, Christopher E Latimer, Yuta Masuda and Christina M Kennedy, 'Catalyzing success in community-based conservation' (2023) 37(1) Conservation Biology e13973.; Leopody Gayo, 'Community-based conserved areas in advancing sustainable development and conservation in Sub-Saharan Africa' (2025) 2(1) Discover Conservation 27.

[5] Folakemi O Ajagunna and Opeyemi A Gbadegesin, 'Do Laws Serve or Oppose Us? Reinventing Environmental Sanitation Laws in Nigeria' (2023) 4(2) Administrative and Environmental Law Review 83 https://doi.org/10.25041/aelr.v4i2.2972.

[6] Hanna Hämäläinen and Janne Salminen, 'Inclusive participation in law-making: good governance or a constitutional obligation?' (2025) The Theory and Practice of Legislation 1–23.

[7] Bianca Ifeoma Chigbu, Sicelo Leonard Makapela and Ikechukwu Umejesi, 'Silent violence in the just transition: structural barriers, governance design, and the hidden costs of climate policy' (2025) 13 Frontiers in Environmental Science 1594740.

stewardship),[8] decoloniality,[9] feminist environmental justice[10] and legal pluralism[11]—and translates them into concrete drafting principles and institutional rules. It then applies those principles in a focused comparative legal review of Nigeria and Kenya. These jurisdictions were chosen for contrast: Nigeria's federal structure and recent climate legislation present different institutional challenges to inclusion than Kenya's devolved system and constitutionally anchored equality architecture.[12] The analysis concentrates on national-level laws most relevant to climate governance (constitutions, climate statutes, key environmental and EIA regimes), and assesses whether statutory text names relevant groups, prescribes concrete inclusion mechanisms, and creates enforceable remedies.

The paper makes two contributions. Theoretically, it links African normative commitments to practicable statutory designs; practically, it offers model clauses, an intersectional inclusion audit checklist and targeted institutional recommendations (quota designs, FPIC procedures, impact-assessment templates, standing rules and accountability mechanisms) for legislators, regulators, advocates and donors. The remainder of the paper develops the normative foundations (Part II), explains the comparative approach (Part III), presents the

[8] Sfiso Nxumalo, 'Introducing Ubuntu to Property Law: A Case for Environmental Stewardship' (2025) 5(2) Edinburgh Student Law Review.
[9] Hyacinth Udah, Carla Tapia Parada, Parlo Singh, Lucy Jordan and Chinyere T Udah, 'Decoloniality – Implications for Rethinking Social Justice: A Systematic Review of the Literature' (2025) 19(3) Studies in Social Justice 540–570.
[10]Emily Olga Rosa Dobrich, 'Perspectives on Advancing Gender and Environmental Justice: Implications and Applications of a Conceptual Model for Supporting Women's Environmental Leadership' (2024) 3 Journal of Academic Perspectives 130.
[11]Jessica Marglin and Mark Letteney, 'Legal pluralism as a category of analysis' (2024) 42(2) Law and History Review 143–153.
[12]Opeyemi A Gbadegesin, 'Legal Pathways to Sustainability in Sub-Saharan Africa: Integrating Indigenous Knowledge and Practices for Climate Adaptation and Food Security in Kenya and Nigeria' (2025) 9(1) Environment & Ecosystem Science 27.

Nigeria–Kenya review (Part IV), outlines model statutory tools and policy recommendations (Part V), and Conclusion.

2.0. Normative Foundations: Ubuntu, Decoloniality, Feminist Justice, and Legal Pluralism

In many African contexts, the philosophy of Ubuntu – loosely "I am because we are" – emphasizes interconnectedness of people and nature.[13] Ubuntu inspires an environmental ethic of shared stewardship: natural resources belong to the community and must be managed for collective well-being.[14] For instance, a river or forest is seen not merely as state property or a commodity, but as a common asset sustaining life. Translating Ubuntu into law implies prioritizing communal rights and welfare: statutes should protect communal land tenure, allocate resources to needy communities, and recognize traditional knowledge as part of national heritage. Ubuntu also demands care for the vulnerable "family" members (the poor, aged, infirm); thus, climate and conservation measures ought to be designed so that no one is "left behind."[15]

Decolonial thought complements Ubuntu by highlighting that many existing laws were inherited from colonial regimes that disregarded local societies.[16] Colonial conservation often marginalized indigenous

[13] Bukunmi Deborah Ajitoni, 'Ubuntu and the Philosophy of Community in African Thought: An Exploration of Collective Identity and Social Harmony' (2024) 7(3) Journal of African Studies and Sustainable Development.

[14] James Kamwachale Khomba, 'Towards Environmental Restoration and Sustainability: Embracing the African Ubuntu Philosophy' (2024) 8 Strathmore LJ 109.

[15] Wilson Zvomuya and Mulwayini Mundau, 'The Efficacy of Ubuntu on Environmental Social Work in Africa' in Ubuntu Philosophy and Decolonising Social Work Fields of Practice in Africa (Routledge 2023) 165–80.

[16] Opeyemi A Gbadegesin, 'Lost in Transplantation: Revisiting Indigenous Principles as a Panacea to Natural Resource Sustainability in Nigeria' (2024) 68(1) Journal of African Law 41 https://doi.org/10.1017/S0021855323000256 .

land rights and imposed external development models. A decolonial legal approach questions these legacies: it calls for active reform of laws that perpetuate historical inequalities.[17] This means recognizing customary and indigenous institutions within formal governance.[18] For example, instead of favoring top-down projects conceived in capital cities, a decolonial strategy would empower rural communities to lead adaptation planning. It would enshrine principles like FPIC for projects on traditional lands, and require that compensation or benefits accrue first to those historically deprived. Decolonial theory therefore reminds us that law is never neutral: climate laws must be crafted to undo – rather than replicate – patterns of exclusion.

Feminist environmental justice brings an intersectional lens, highlighting that climate impacts and governance are shaped by gender, class, race, age, and other identities.[19] Climate change is not gender-neutral: in many African communities, women have fewer resources, less secure land tenure, and bear greater care burdens.[20] Similarly, policies can affect a wealthy man, a rural widow, and a disabled youth in drastically different ways. Feminist justice demands that laws explicitly account for these overlaps.[21] For example, an ostensibly "gender-neutral" irrigation project could inadvertently deny women

[17] Ngozi A Erondu, Vyoma Dhar Sharma and Moses Mulumba, 'Decolonial Framings in Global Health Law: Redressing Colonial Legacies for a Just and Equitable Future' (2025) 53 Suppl S1 Journal of Law, Medicine & Ethics 76–78.
[18] Opeyemi A Gbadegesin and S Akintola, 'Bridging the Governance Gap: A Case for an Indigenous Jurisprudential Framework for Genomic and Biobanking Research in Nigeria' (2025) Bioethical Inquiry https://doi.org/10.1007/s11673-025-10463-2. accessed 11 November 2025.
[19]Christina Ergas, Laura McKinney and Shannon Elizabeth Bell, 'Intersectionality and the Environment' in Handbook of Environmental Sociology (Springer International Publishing 2021) 15–34.
[20]Alex O Awiti, 'Climate Change and Gender in Africa: A Review of Impact and Gender-Responsive Solutions' (2022) 4 Frontiers in Climate 895950.
[21]Austin T Phiri, et al., 'A Review of Gender Inclusivity in Agriculture and Natural Resources Management under the Changing Climate in Sub-Saharan Africa' (2022) 8(1) Cogent Social Sciences 2024674.

farmers access if land titles go only to male heads of households. More importantly, feminist scholars show that inclusion strengthens policy outcomes: [22] broad representation builds legitimacy and generates locally adapted solutions. In sum, feminist environmental justice calls for both procedural equity (meaningful voice for women, youth, disabled, etc.) and substantive equity (policies that directly address their needs).

Finally, legal pluralism recognizes that African societies are regulated not only by state law but also by customary and religious norms.[23] For example, land use might be governed by tribal customs even where a national law exists. Pluralism means bridging these systems rather than ignoring them. Instead of dismissing customary law as archaic, an inclusive approach would integrate it into formal processes: a law might require that EIAs be presented in village councils, or that community elders participate in dispute resolution. In some African statutes, this idea is already present. For instance, Cameroon's 1996 Environmental Management Law embodies a "substitution principle": if no written law applies, effective customary norms "kick in" to protect the environment. [24] However, pluralism can also be tricky: customary

[22] Deborah Ayodele-Olajire, Opeyemi Gbadegesin and Adeniyi Gbadegesin, 'Conquering Energy Poverty in Nigeria: Lessons from Countries Transitioning to Green and Clean Energy' (2023) 3(1) Benin Journal of Geography, Planning and Environment 45; Olena Hankivsky, 'Gender vs Diversity Mainstreaming: A Preliminary Examination of the Role and Transformative Potential of Feminist Theory' (2005) 38(4) Canadian Journal of Political Science / Revue canadienne de science politique 977; Etienne Lwamba et al, 'Strengthening Women's Empowerment and Gender Equality in Fragile Contexts towards Peaceful and Inclusive Societies: A Systematic Review and Meta-analysis' (2022) 18(1) Campbell Systematic Reviews e1214.

[23]Berihun A Gebeye, 'Decoding Legal Pluralism in Africa' (2017) 49(2) Journal of Legal Pluralism and Unofficial Law 228; Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) Law & Society Review 869.

[24]Cameroon's Law No. 96/12 of August 5, 1996, on Environmental Management explicitly includes a "substitution principle". According to Section 9(f), the principle states that:"in the absence of a written general or specific rule of law on environmental

institutions sometimes discriminate (e.g. against women's inheritance).[25] A careful legal design must ensure that integration of customs does not entrench inequalities. In practice, this might mean a hierarchy in which human-rights norms override discriminatory customs, or that only community rules meeting basic equity standards are recognized.

Together, these frameworks – Ubuntu's communalism, decolonial justice, feminist intersectionality, and pluralist recognition – create a demanding but attainable vision for law. Climate and biodiversity statutes should not treat people and nature as mere resources; they must be informed by communal values, redress historical exclusion, and secure equitable outcomes for diverse groups. This normative lens informs the assessment of the case countries' statutory frameworks.

3.0. Methodology

To assess statutory alignment with the paper's normative ideals, the paper undertook a comparative legal review of Nigeria and Kenya. The jurisdictions were selected for contrast in geography, legal traditions and climate governance: Nigeria (West Africa) is a federal state with a British common-law heritage and significant oil wealth, whose federal–state complexity and oil-pollution legacy raise acute inclusion challenges; Kenya (East Africa) is a unitary state with a hybrid legal system, a progressive 2010 Constitution and devolved county governments, offering a different participatory architecture.

Statutory sources were collected for each country, including constitutions, climate-change acts and policies, national biodiversity

protection, the identified customary norm of a given land, accepted as more efficient for environmental protection, shall apply

[25] Brian Z Tamanaha, Legal Pluralism Explained: History, Theory, Consequences (Oxford University Press 2021).

and environmental statutes (environmental management/EIA laws, forest and wildlife statutes, land laws), and regulations governing public participation. When multiple texts existed, the most recent enactments were prioritised (for example, Kenya's 2016 Climate Act and the 2019 Environmental Management and Co-ordination Act supersede earlier measures; Nigeria's 2021 Climate Change Act is central). Major instruments affecting land, forests, water or community rights were included; the paper did not attempt an exhaustive inventory of every subnational or customary rule.

Each statute was coded qualitatively along three analytic dimensions of inclusion:

1. Subjects of inclusion — whether the text explicitly names groups such as women, youth, PWDs, indigenous peoples or local communities.
2. Mechanisms of inclusion — whether the statute prescribes concrete tools (reserved seats or quotas, targeted funds, mandatory consultations, FPIC, required impact assessments).
3. Enforcement modalities — whether inclusion provisions are rendered enforceable (broad legal standing, specialised courts or tribunals, ombudspersons, or other binding remedies and administrative sanctions).

Coding proceeded by close reading, keyword searches and contextual interpretation of statutory language. The legal texts were supplemented with relevant policy documents (for example, Nigeria's National Adaptation Plan and Kenyan jurisprudence on gender quotas) where they clarified statutory intent or application. Limitations are acknowledged: statutory text does not ensure implementation, and some enactments or drafts may lack practical effect. Accordingly, findings focus on formal legal frameworks and identify where statutory design creates opportunities or barriers to meaningful inclusion rather than measuring on-the-ground implementation.

4.0. Comparative Analysis of Nigeria and Kenya

The paper reveals that both countries formally acknowledge participation and equity, but with varying specificity and enforceability. The paper summarizes key themes below.

4.1. Gender and Social Inclusion

Nigeria: Nigeria's 2021 Climate Change Act (CCA) establishes a National Council on Climate Change (NCCC) but provides only general language on inclusion.[26] The CCA explicitly mandates that the Council include representatives of women, youth, and PWDs.[27] However, it does not set numerical quotas or empower these members beyond saying they "are part of the council". Similarly, Nigeria's constitution broadly prohibits discrimination on grounds including sex and ethnicity,[28] but this equality right has not been translated into specific quotas in climate or environment laws. On the other hand, some policy documents identify women and children as vulnerable populations,[29] yet climate finance or project guidelines rarely require gender impact assessments. In practice, planning and funding processes are still largely male-dominated.[30]

Kenya: Kenya's legal framework is more explicit on gender. The 2010 Constitution enshrines affirmative action as regards minorities and marginalised groups[31] and the right to a clean environment with public participation. [32] Building on this, the 2016 Climate Change Act

[26] Climate Change Act 2021 (Nigeria) s 3(1)
[27] Climate Change Act 2021 (Nigeria) s 5(1)(s)
[28] See Constitution of the Federal Republic of Nigeria 1999 (as amended) s 42.
[29] Examples of such policy documents include but not limited to Nigeria's National Adaptation Plan, National Climate Policy 2012, The Child's Rights Act (2003), National Child Health Policy (NCHP)(2022), National Gender Policy (2021-2026)
[30] Oluwakemi Igiebor, 'Women, academic leadership and the "constricting" gender equity policies in Nigerian universities: an integrated feminist approach' (2021) 43(4) Journal of Higher Education Policy and Management 338–52.
[31] Constitution of Kenya 2010, art 56
[32] Constitution of Kenya 2010, art 69

repeatedly mainstreams "gender and intergenerational equity." [33] Notably, it requires the President to ensure that the Climate Council complies with the constitutional "two-thirds gender principle" [34] In concrete terms, the Council's membership rules require that, among other representatives, at least one person is a member of a marginalized community knowledgeable in indigenous practices, and all appointments must respect gender balance.[35] The Act also tasks the Council and Cabinet Secretary with developing a "gender-responsive" climate strategy and ensuring climate actions benefit women and girls.[36]

In summary, gender is the most consistently addressed category in both countries, but with different approaches. Kenya's laws explicitly call for women's representation and equity (even if political failure often frustrates implementation), whereas Nigeria's law mentions women as a stakeholder group but lacks binding targets. Neither country yet mandates gender impact assessments across all environmental policies. Youth and disability are similarly uneven: both Constitutions recognize youth and disabled persons as disadvantaged, but only Nigeria's Climate Act (and adaptation plans) even mention youth; formal quotas for youth or PWD are absent in both laws.

4.2. Indigenous and Community Recognition

Nigeria: Like most African states, Nigeria's laws seldom use the term "indigenous peoples."[37] The 1999 Constitution vests land in federal or

[33] Climate Change Act 2016 (Kenya) s 3(e), 6(d), 8(c), 9(8)(f), 25(5)(e)
[34] Climate Change Act 2016 (Kenya) s 7(6)
[35] Climate Change Act 2016 (Kenya) s 7
[36] Outside the climate law, Kenya's land and local governance statutes include some gender provisions (e.g. at least one woman per village council), though we focus here on national climate law
[37] Some African states recognize indigenous peoples' rights through targeted laws and policies. Congo's 2011 law and Kenya's 2010 Constitution protect these communities. Eritrea and Ethiopia recognize ethnic groups but often fail to implement rights. Burundi reserves quotas for minorities like the Batwa. While some show political will, many remain hesitant.

state governments, recognizing communal rights only indirectly (e.g. mining law acknowledges land occupiers must consent to prospecting, but without a strong FPIC regime).[38] In the CCA, there is no mention of "traditional" or "indigenous" knowledge. Rural or ethnic minorities are generically covered under constitutional equality clauses (no discrimination by "ethnic association, place of origin"), but this does not translate into special climate rights or participation channels. As a result, many resource-dependent communities find their customary land and livelihoods overlooked in planning.[39] Implementation reflects this gap: major projects like dams or pipelines have proceeded without effective local consent, fueling conflict.[40]

Kenya: Kenya's laws provide somewhat stronger recognition of marginalized communities. The 2010 Constitution defines "marginalised community" expansively,[41] and Article 69 explicitly obliges the state to encourage communities to manage the environment on a sustainable basis. The Climate Change Act, for example, requires that when formulating plans the Cabinet Secretary consider the impacts on "marginalised and disadvantaged communities" and integrate indigenous knowledge.[42] Critically, the law mandates that the National Climate Change Council include "a representative of the marginalised

[38]The 1999 Nigerian Constitution vests land in the Governor of a State to hold in trust for all citizens through the Land Use Act, which is incorporated into the constitution via section 315(5). While the Constitution grants every citizen the right to own immovable property anywhere in Nigeria (section 43), the practical day-to-day administration and control of land are handled by state governors, who are empowered by the Land Use Act.

[39]Opeyemi A Gbadegesin, 'For the Tree of the Field is Man's Life: Harnessing Indigenous Principles for Achieving REDD+ Goals in Nigeria' (2024) 2(1) Ecological Risk and Security Research 9168 https://doi.org/10.59429/ersr.v2i1.9168 .

[40] Victoria Ibezim-Ohaeri, 'Struggles for a Just Energy Transition in Nigeria's Niger Delta: Just for Whom?' (2025) 56(2) IDS Bulletin https://doi.org/10.19088/1968-2025.139
accessed 28 November 2025

[41] See Constitution of Kenya 2010 Art.260

[42] Climate Change Act 2016 (Kenya) s 13

community… with knowledge… of indigenous knowledge".[43] This is a concrete step towards giving a voice to rural or ethnic groups. Kenya's devolution has also created County Climate Change Units and Committees, ideally bringing policy closer to local stakeholders (though actual practice varies by county). Nevertheless, some gaps remain: no law grants absolute land veto (FPIC) to communities – consultation is required under the Environment Management Act, but affected villages often feel sidelined.[44] Traditional institutions play no formal role under national climate laws, though they could be engaged under the broad participation mandates.[45]

Overall, Kenya makes deliberate mention of local communities and indigenous knowledge in its statutes, whereas Nigeria largely treats citizens uniformly. Neither country has a comprehensive legal regime for community consent comparable to international norms.[46]

4.3. Participatory and Institutional Mechanisms

The paper finds that both countries theoretically guarantee public participation in environmental decisions (through environmental impact assessment laws and constitutional rights), but the enforceability varies.

Nigeria: Nigeria's 1992 EIA Act (amended) requires stakeholder consultation for major projects,[47] but in practice the process is often perfunctory.[48] There is no national climate-specific consultation law

[43] Climate Change Act 2016 (Kenya) s 7(2)(h)

[44]Francis S Omweri, 'The Constitutional Eschatology of Decentralization in Kenya: Exploring Federalism's Role in Shaping the Future of Devolution and Regional Autonomy' (2024) 2(3) International Journal of Innovative Scientific Research 37–67.

[45]Ibid

[46]The difference is illustrated by the South African model: South Africa's Climate Act 2024 explicitly lists "indigenous knowledge" in its principles and names "women… poor and rural… and persons with disabilities" as vulnerable groups setting a high standard not yet matched by Nigeria or Kenya.

[47] Environmental Impact Assessment Act 1992 (Nigeria) s 1(c)

[48]Onyekachi Eni, Chukwunonso Peter Okoli and Ngozi Chinwa Ole, 'Mapping the Weaknesses of Nigeria's Environmental Impact Assessment Act as a Framework for

except the standing directives in policy documents. The CCA does include an innovative provision: any person "with an interest" may sue if a federal policy undermines mitigation or adaptation goals (in effect granting broad legal standing). However, to date this has not translated into successful climate litigation.[49] Civil society groups – sometimes led by women's or youth organizations – have pressed for inclusive planning, but statutory mandates remain weak. [50] Nigeria's governmental bodies are numerous (Federal Ministry of Environment, various commissions), and the National Council on Climate Change is meant to coordinate across sectors, but it has no guaranteed non-state seats beyond those for women/youth/PWD. State (subnational) agencies handle some environmental permitting, but there is no formal requirement for states to create their own climate committees. In sum, public participation and accountability mechanisms exist on paper, but limited resources and political will have hindered their practice.

Kenya: Kenya's Constitution expressly promotes public involvement in environmental decision-making in Art. 69(1)(d). The Environmental Management and Co-ordination Act (EMCA) 2019 requires public hearings for EIA and empowers citizens to sue for environmental rights.[51] Kenya also established a specialized Environment & Land Court.[52] On climate, the 2016 Act created a Climate Change Directorate

Environmental Protection in the Mining Industry' (2024) 8(2) Chinese Journal of Environmental Law 187–208.

[49] Nigeria clearly illustrates this pattern: *Centre for Oil Pollution Watch v. NNPC* [2019] 5 NWLR (Pt. 1666) 518 granted NGOs broad environmental standing, while *Gbemre v. Shell* (FHC/B/CS/53/05, 2005) recognized gas flaring's climate impacts, yet both failed to translate procedural victories into successful climate mitigation or adaptation litigation.

[50] Celestina Onome Ozabor, 'Gender Inclusivity and Social Equality as Tools for Promoting National Integration in Nigeria' (2025) 6(2) Jalingo Journal of Social and Management Science 232–41.

[51] Environmental Management and Co-ordination Act 2019 (Kenya) s 32(bb)

[52] Kenya established a specialized Environment and Land Court (ELC) as a superior court with the same status as the High Court, as mandated by Article 162(2) of the 2010 Constitution. Its purpose is to hear and determine disputes related to the

and required county governments to integrate climate strategies into development plans,[53] though it stops short of compelling county climate councils by law. Notably, Kenya's two-tier climate institutions (National and County units) and the NCCC are meant to be participatory forums. As noted, the NCCC must include a civil-society nominee and a marginalized representative. In practice, however, participation quality varies. Civil society in Kenya is relatively strong: organizations of women farmers, pastoralists, and youth often use public interest litigation to assert rights.[54] Local governments have held public fora on climate policy, though attendance skews urban and privileged. Kenya's courts have begun to interpret the two-thirds gender rule from the Constitution, but success has been mixed.[55] Overall, Kenya provides institutional space for inclusion on paper, with stronger legal channels than Nigeria, but also suffers from under-enforcement and political resistance.

In sum, Nigeria and Kenya formally endorse broad participation and equity, but enforcement is uneven. Reserved seats and standing rules open space for marginalized voices, yet inclusion is not self-executing:

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environment, land use, occupation, and title, exercising jurisdiction throughout the country. This specialized court was created to handle these specific matters and provides a dedicated framework for resolving them.

[53]Climate Change Act 2016 (Kenya) s 9

[54]David Odhiambo Chiawo et al, 'Human Rights-Based Approach to Community Development: Insights from a Public–Private Development Model in Kenya' (2025) 6(3) World 104.

[55] Kenya's courts have interpreted the two-thirds gender rule through cases like *Centre for Rights and Education Awareness (CREW) v Attorney General and another* (2016), where the court found the AG and the Commission for the Implementation of the Constitution in breach of their duty to present legislation to Parliament. Another key interpretation is found in the *National Gender and Equality Commission v Majority Leader, County Assembly of Nakuru* (2019), where the court declared that committees of County Assemblies must comply with the rule. A more general interpretation occurred in a case where a male-only nomination to the office of the Attorney General, Director of Public Prosecutions, and Controller of Budget was challenged, and the court found this to be discriminatory against women, ruling it a violation of Article (27(3)) of the Constitution.

it requires resources, vigilant advocates and institutional follow-through. Nigeria's CCA widens membership to women, youth and PWDs but lacks quotas or funding, and affected communities still face barriers to redress. Kenya's stronger constitutional equality has produced more progressive statutes, but governance gaps mean climate finance can still bypass remote communities. These findings show real progress alongside persistent implementation gaps. The next section proposes concrete legal and policy instruments to bridge theory and practice.

5.0. Policy Recommendations and Inclusive Legal Design

Based on the above analysis and our normative frameworks, the paper proposes a set of legal formulations and policy measures to embed inclusion in climate and governance. Rather than vague platitudes, these are model provisions and strategies that African legislatures and regulators could adopt. They can be customized to national contexts, but illustrate how to operationalize Ubuntu, decoloniality, feminist justice, and pluralism in law.

5.1. Equitable Benefits and Community Rights: Laws should transform the public-trust notion into specific duties. For example, a statute could mandate that *"all communities traditionally dependent on a natural resource (including rural, urban, minority, and indigenous communities) shall have priority access to its sustainable benefits, with special attention to women, youth, PWDs and the poor."* This clause (echoing Ubuntu) would require that climate projects share revenues or services equitably, and that communal land rights are recognized. In practice, it might mean dedicating a portion of carbon-offset or REDD+ revenues to local cooperative enterprises, or legally prioritizing community-based wildlife conservancies. Embedding such wording in law forces

planners to distribute gains fairly rather than letting them accumulate to powerful interests.[56]

5.2. FPIC and Traditional Knowledge: Legislation should explicitly protect communities' autonomy. A model clause could state: *"No project significantly affecting the lands, resources or culture of local or indigenous communities shall proceed without their free, prior and informed consent. Consent processes must be culturally appropriate. Indigenous knowledge holders shall be formally included in project planning, and customary land tenure systems shall be respected in allocating land rights."* This decolonial-inspired provision affirms self-determination. Even without using the loaded term "indigenous peoples," it signals that government and companies must negotiate with villages before large infrastructure or conservation projects. Kenya's forests and minerals laws have similar language for consultation; the paper advocates broadening it to all climat ventures. Importantly, FPIC must be backed by legal standing: if a community's consent is ignored, courts or tribunals should be empowered to halt the project.

5.3. Gender and Vulnerability Mainstreaming: A robust statute would require intersectional impact analysis. For instance, *"All climate change policies, plans, and projects shall include a Vulnerability Impact Assessment, identifying differential effects on men, women, boys, girls, youth, the elderly, PWDs, and marginalized communities, and setting out mitigation measures."* It could also mandate creation of a Gender-Climate Unit in the environment ministry to coordinate such reviews. In addition, the law should require affirmative representation: e.g. *"At least one-third of members (or an equivalent proportion) of any climate or conservation decision-making body shall be women; youth and*

[56] Adeniyi Gbadegesin and Bolanle Olajiire-Ajayi, 'Beyond COVID-19: Turning Crisis to Opportunity in Nigeria through Urban Agriculture' (2020) 9(4) Journal of Agriculture, Food Systems, and Community Development 171 https://doi.org/10.5304/jafscd.2020.094.033 .

PWDs shall also be represented." Similar quotas could be set for other categories, or committees could be asked to "broadly reflect the country's demographics." These devices concretize feminist justice. While some may worry quotas delay implementation, evidence suggests that planned inclusion actually improves the quality of decisions by bringing in diverse perspectives.[57]

5.4. Inclusive Institutional Arrangements: Beyond quotas, laws should restructure governance processes. For example: *"Climate and biodiversity committees at all levels shall meet in accessible venues and provide interpretation and disability accommodations. Proceedings shall be transparent (e.g. multi-language minutes published). Traditional authorities (such as village councils or elders) shall have a mandated consultative role in approving local resource management plans."* This recommendation realizes pluralism by integrating customary bodies: for instance, an amendment to an Environment Act could require that a community's elected elders be formally consulted in EIA hearings or land-use decisions. South Africa's practice of rotating meeting locations to rural areas is a useful model. In short, institutions must be redesigned so that inclusion is built in (not bolted on).

5.5. Accountability and Oversight: Inclusion rules must be justiciable. Laws should grant broad standing and remedies for exclusion. For example, *"Any person or community may apply to a court or designated tribunal alleging violation of a right under this Act. The court shall have the power to suspend projects or policies until inclusion requirements*

[57] Jessica Jones and Alessio Russo, 'Exploring the Role of Public Participation in Delivering Inclusive, Quality, and Resilient Green Infrastructure for Climate Adaptation in the UK' (2024) 148 Cities 104879;Chris Brown and Ruth Luzmore, 'An Educated Society Is an Ideas-Informed Society: A Proposed Theoretical Framework for Effective Ideas Engagement' (2025) 51(2) British Educational Research Journal 969–89;Hasnain Javed, 'Creating a Positive Workplace Culture: Diversity, Equity, and Inclusion Initiatives' in Innovative Human Resource Management for SMEs (IGI Global Scientific Publishing 2024) 367–94.

are met." Alternatively, a dedicated Environment/Climate Ombudsperson could be empowered to investigate complaints of discrimination or non-consultation. To reinforce this, the paper proposes mandatory auditing: every few years, governments must report on inclusion metrics (number of women in committees, funding to minority projects, etc.). An intersectional inclusion audit checklist (to guide such reviews) would ask key questions: Does the law explicitly recognize all relevant groups (women, youth, PWDs, indigenous/local communities)? Does it mandate specific measures (quotas, FPIC, impact assessments)? Are there enforcement channels (courts, ombudsmen, civil society rights)? This audit approach makes abstract norms operational: legislators and civil society can systematically check a draft law or policy for gaps.[58]

To implement these ideas, the paper recommends a multi-pronged roadmap. In the short term (1–2 years), parliaments and governments should review existing climate, environment and natural-resource statutes to plug obvious holes. This could mean introducing amendments: for instance, revising a Climate Change Act to include an inclusion schedule, or passing regulations that define procedures for community consent. Where new legislation is being drafted, inclusion clauses should be inserted from the outset (e.g. in the preamble and objects). Countries without a comprehensive climate law should use this opportunity to write inclusivity into the core objectives. Crucially, civil society – including women's groups, youth coalitions and indigenous networks – must be involved in these lawmaking processes to press for meaningful language.

[58] Opeyemi Adewale Gbadegesin, 'Leveraging Artificial Intelligence (AI) in Strengthening the Legal Framework for Regulation of Wildlife and Forest Crimes in Nigeria' (2023) 53 Environmental Policy and Law 259 https://doi.org/10.3233/EPL-230011 .

Medium-term (3–5 years) actions involve building capacity and accountability. Governments should establish inter-agency committees linking environment, gender, disability and local government ministries. For example, a "Diversity in Climate" task force could oversee implementation of the above clauses. Training is essential: judges, administrators and community leaders need guidance on conducting accessible consultations and interpreting new inclusion norms. National budgets should allocate resources for inclusive practices (stipends or transport for community representatives to attend hearings, translation services, gender officers in climate ministries, etc.). International donors and climate funds can accelerate this by conditioning grants on inclusion criteria – a practice increasingly seen in global climate finance. Monitoring systems must collect disaggregated data: climate spending by region and beneficiary group, gender breakdowns of project teams, numbers of FPIC agreements obtained, etc. Such data will enable continuous improvement and public scrutiny.

In the longer term (5–10 years), the ultimate goal is to entrench social-environmental rights at the highest level. Several African countries are already discussing constitutional amendments for environmental rights (e.g. enshrining the right to a healthy environment or requiring equitable climate action). This paper advocates a push for constitutional language that explicitly links climate to rights and inclusion (for example, a clause guaranteeing "all persons, including future generations and diverse communities, a clean, safe and sustainable environment"). Embedding inclusion principles in supreme law would make them harder to reverse.

In summary, the model clauses and recommendations proposed translate the earlier normative insights into actionable lawmaking. They constitute a menu of "best practices" tailored to the African context. Legislators and policy-makers can adapt these to national circumstances – for instance, choosing appropriate quota levels or specifying which customary institutions to engage. What is essential is the principle that

inclusion must be designed into legal frameworks, not left to vague aspiration.

6.0. Conclusion

This paper has shown that while many African states formally endorse participation and equity in climate governance, statutory frameworks too often stop at rhetoric: laws name vulnerable groups but frequently lack concrete, enforceable mechanisms to secure their voice and benefits. The Nigeria–Kenya comparison illustrates this pattern in microcosm—Kenya's constitutional and statutory architecture gives clearer hooks for representation and indigenous-knowledge recognition, whereas Nigeria's newer climate statute recognises vulnerable groups without embedding binding quotas, robust FPIC procedures, or predictable funding and remedies. Interpreted through Ubuntu, decoloniality, feminist environmental justice and legal pluralism, these gaps are not merely technical but normatively significant: they turn solidaristic ideals into optional practice unless translated into precise drafting, institutional design, and oversight.

The immediate policy implication is straightforward: inclusion must be designed in, not left to goodwill. A realistic first step for legislators and advocates is a targeted statutory review and amendment process — for example, adding an "inclusion schedule" to climate and environment acts that codifies FPIC, mandated gender-and-vulnerability impact assessments, enforceable representation rules, and broad standing for communities and equality-seeking organisations. Implementation requires parallel investment: disaggregated data systems, capacity-building for courts and local institutions, and earmarked budget lines for participation.