Available online at
http://ejournal.uin-suska.ac.id/index.php/asiapacific/index
E-ISSN 2715-1816 | P-ISSN 2442-7896]

Asia Pacific Journal on Religion and Society
Volume. 8 Number 2 July-December 2024
Page. 62-74

BETWEEN RECOGNITION AND EXCLUSION:
Indigenous Peoples' Rights in Asia's Development Policies

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KEYWORD

Indigenous Peoples, Legal Recognition, Development Policy, Structural Exclusion

ABSTRACT

This article critically examines the paradox of legal recognition and structural exclusion of indigenous peoples in Asia, with a focus on the Philippines, Nepal, and Indonesia. While many Asian states have adopted progressive legal instruments to recognize indigenous rights—often aligning with international standards such as ILO Convention No. 169 and UNDRIP—implementation remains fragmented, conditional, and subordinate to dominant development paradigms. Drawing on a critical policy analysis of legal texts, governance frameworks, and regional case studies, the paper argues that recognition, in the absence of structural transformation, functions as a tool of managed inclusion that obscures ongoing dispossession. Development policies driven by extractive economies, centralized authority, and technocratic rationalities continue to marginalize indigenous territories and knowledge systems. The article calls for a reconfiguration of recognition as a decolonial and rights-based practice that centers indigenous sovereignty, co-governance, and epistemic justice in shaping inclusive futures.

INTRODUCTION

In recent decades, the global discourse on human rights and development has increasingly highlighted the imperative of recognizing the rights of indigenous peoples as a cornerstone of inclusive and sustainable development. While Asia is home to more than two-thirds of the world's estimated 476 million indigenous peoples—constituting approximately 260 million individuals across diverse cultures, languages, and social structures—their legal recognition and political visibility remain profoundly uneven and often contested across the region (Errico, 2020). Despite various national frameworks and policy initiatives that nominally address indigenous rights, there persists a disjuncture between formal recognition and the lived realities of exclusion, marginalization, and dispossession experienced by indigenous communities (Errico, 2007).

A complex and uneven landscape of legal and policy frameworks across Asian countries—such as the Philippines, Nepal, and India—reveals divergent trajectories in state engagement with indigenous identity and rights. In some cases, progressive legal instruments have been adopted. For instance, the Philippines enacted the *Indigenous Peoples Rights Act (IPRA)* in 1997, which affirms indigenous peoples' ancestral domain rights, self-governance, and cultural integrity. Nepal, as the only Asian country to ratify ILO Convention No. 169, has formally recognized 59 *Adivasi Janajati* groups and integrated affirmative action into its 2015 Constitution (Article 18 and 42), including the creation of an Adivasi Janajati Commission (Cohen, 2023).

Conversely, in countries such as Indonesia and Bangladesh, the recognition of indigenous status remains politically sensitive and legally ambiguous. In Indonesia, although the Constitutional Court (Decision No. 35/PUU-X/2012) recognized the customary land rights of *masyarakat adat*, a national law explicitly recognizing indigenous peoples' collective rights has remained stalled in Parliament since 2011. Moreover, the term "indigenous" is still officially resisted, with state institutions preferring the more bureaucratic term *masyarakat hukum adat*, whose application is conditioned by criteria such as compatibility with "national development" and "modernity."

In Bangladesh, the Constitution avoids the term "indigenous" altogether, referring instead to "tribes, minor races, ethnic sects and communities" (Article 23A), while many state policies frame them as "backward sections." Although the Chittagong Hill Tracts Peace Accord of 1997 was a landmark agreement recognizing the rights of *Pahari* peoples, its implementation remains partial and contested, particularly in relation to demilitarization and land restitution.

Compounding this legal ambivalence is the dominance of development paradigms driven by extractive industries, infrastructure expansion, and agribusiness. These sectors often overlap with indigenous territories but are pursued without adequate consultation or consent. For example, in India, despite the Forest Rights Act (Agarwal, 2018), *scheduled tribes* continue to face mass evictions due to conservation and mining projects. In Cambodia, the Land Law (Russell, 1997) and Sub-Decree on Indigenous Land Registration (2009) recognize collective land rights, yet as of 2016, only 24 indigenous communities had obtained communal land titles—out of more than 400 eligible groups—due to bureaucratic delays and corporate encroachment.

These realities demonstrate that development initiatives, while rhetorically inclusive, frequently marginalize indigenous peoples by undermining their customary land tenure systems, eroding cultural lifeways, and excluding them from decision-making. Far from serving as a vehicle of empowerment, development has become a site where indigenous exclusion is both reproduced and institutionalized—often under the legitimizing discourse of national progress.

This situation is further complicated by the global agendas on Sustainable Development Goals (SDGs) and climate change mitigation, which, although grounded in human rights-based principles, often fail to translate into concrete protections for indigenous populations in national development strategies. Critical literature suggests that without explicit legal recognition, meaningful participation, and culturally sensitive policy design, the promise of "leaving no one behind" remains rhetorical for many indigenous groups in Asia (ILO, 2008; UN, 2015).

While a growing body of literature has explored the condition of indigenous peoples in Asia, much of this scholarship tends to focus on segmented domains—such as legislative reform, land dispossession, or participatory mechanisms—without situating them within the broader architecture of development planning and state power (Inman, 2015; Murray Li, 2010). This fragmentation of analysis risks obscuring the systemic ways in which development frameworks, even when formally inclusive, can reinforce longstanding patterns of marginalization.

Despite the proliferation of national laws and policies purporting to recognize indigenous rights, empirical evidence suggests a persistent and widening gap between normative recognition and actual implementation. Existing studies often under-theorize how recognition itself can become a mechanism of control, co-optation, or selective inclusion, especially when framed through technocratic or depoliticized logics of governance. As such, formal legal acknowledgement does not necessarily translate into substantive justice, nor does it disrupt entrenched asymmetries of power between indigenous communities and state-corporate actors (De Satgé & Watson, 2018).

This analytical gap is particularly salient in the context of Asia, where national development strategies—often framed around poverty alleviation, infrastructure-led growth, or environmental sustainability—frequently bypass indigenous consent, erase customary land tenure systems, and instrumentalize indigeneity for state-building purposes. The paradox is that indigenous peoples are

simultaneously included as "targets" of development and excluded as rights-bearing subjects with political agency. Thus, the question is not merely whether indigenous peoples are recognized, but how they are recognized, by whom, and to what ends.

Addressing this research lacuna requires moving beyond descriptive accounts of indigenous rights violations toward a more integrated critique that connects legal recognition to the structural logics of development. This includes interrogating how legal pluralism is operationalized, how "consultation" can be reduced to procedural formalities, and how indigenous epistemologies and governance systems are marginalized under dominant state-centric models of progress (Trzcinski & Upham, 2014).

Accordingly, this article seeks to bridge these fragmented discourses by analyzing the intersection of indigenous legal recognition, national development agendas, and structural exclusion across selected Asian contexts. It advances the argument that development policies, even those couched in inclusive rhetoric, often function as technologies of exclusion when they fail to engage meaningfully with indigenous autonomy, land sovereignty, and cultural self-determination.

This article aims to interrogate this paradox by analyzing how national development policies in selected Asian countries simultaneously recognize and exclude indigenous peoples. Drawing on a human rights-based framework, the paper examines legal and institutional approaches, evaluates policy coherence with international norms, and explores the extent to which development strategies accommodate or marginalize indigenous rights and agency.

By situating the analysis within the broader context of global development agendas, this study contributes to the critical literature on indigenous rights and offers policy-relevant insights for rethinking inclusive development paradigms in Asia.

THEORETICAL FRAMEWORK

The analysis of indigenous peoples' rights in the context of Asian development policies demands an interdisciplinary theoretical lens—one that accounts for the tensions between formal recognition, lived exclusion, and the structural conditions that reproduce inequality. This study draws upon four interrelated theoretical orientations: legal pluralism, critical development theory, structural exclusion, and the rights-based approach to development.

First, the concept of legal pluralism provides a useful entry point for interrogating the contested terrain of indigenous recognition (Macklem, 2017). Legal pluralism challenges the notion of state law as the sole or supreme legal order, and instead recognizes the coexistence of multiple normative systems—including customary, religious, and indigenous laws—within a single political jurisdiction. In many Asian contexts, indigenous peoples possess long-standing governance systems that regulate land tenure, resource use, and community relations (Helfand, 2015). However, these systems are frequently rendered invisible, subordinated, or selectively incorporated by dominant state legal frameworks. Drawing on scholars such as Sally Engle Merry (2012) and Boaventura de Sousa Santos (Santos, 2020), this framework illuminates how formal recognition of indigenous rights often operates through the logic of "contained pluralism"—granting recognition in limited domains while simultaneously disempowering indigenous legal authority.

Second, this study engages with critical development theory and post-development critique, particularly as articulated by Arturo Escobar and James Ferguson. These perspectives argue that development is not a neutral or purely technical enterprise, but a discursive regime that constructs subjects, territories, and futures according to Eurocentric and statist paradigms of modernity. Within this framework, indigenous peoples are often framed either as passive "beneficiaries" of development or as obstacles to progress, rather than as rights-bearing political actors with distinct ontologies and aspirations. The deployment of "inclusivity" and "poverty reduction" discourse in state-led development planning often serves to legitimize interventions that ultimately displace or assimilate indigenous communities.

Third, the concept of structural exclusion is central to understanding how marginalization persists

despite legal recognition. Structural exclusion refers to the systemic and institutionalized forms of disadvantage embedded within social, political, and economic arrangements. It highlights how power operates not merely through coercion or neglect, but through selective inclusion, procedural formalism, and technocratic governance. Legal recognition of indigenous peoples, when stripped of enforceable rights or effective participatory mechanisms, can function as a façade—obscuring deeper relations of domination. Michel Foucault's notion of "governmentality" is particularly relevant here, as it sheds light on how states seek to regulate populations through normative categories, administrative tools, and development rationalities.

Finally, the human rights-based approach to development (HRBA) serves as a normative framework to critique existing development models and propose alternatives grounded in justice, equity, and participation (Gillespie, 2013; Uvin, 2007; Xiang & Maïnkade, 2023). HRBA asserts that development must be consistent with international human rights standards, including the right to self-determination, cultural integrity, and free, prior and informed consent (FPIC) for indigenous peoples. However, as this study argues, the integration of HRBA into national policy is often superficial, lacking mechanisms for accountability and enforcement. Bridging the gap between human rights commitments and development practice thus remains a critical challenge.

By synthesizing these perspectives, this study situates indigenous recognition not merely as a matter of legal formality or cultural accommodation, but as a deeply political process embedded in competing visions of development, identity, and sovereignty. This theoretical framework allows for a critical interrogation of how recognition can simultaneously empower and exclude, and how development policies must be reimagined to support the self-determined futures of indigenous communities in Asia.

RESEARCH METHODOLOGY

This study adopts a qualitative, critical, and interpretive approach to examine the intersection between indigenous peoples' legal recognition and national development policies across selected Asian countries (Anggito & Johan Setiawan, 2018; Bungin, 2012). The methodological orientation is grounded in critical policy analysis, which seeks not only to understand what policies say and do, but also to interrogate the underlying assumptions, power relations, and socio-political effects that they produce. Rather than treating law and policy as neutral instruments, this approach analyzes them as discursive formations embedded in particular ideological, historical, and institutional contexts (Raharjo, 2019).

The study is based primarily on documentary analysis, using as its core source the 2017 International Labour Organization (ILO) report *"The Rights of Indigenous Peoples in Asia"* by Stefania Errico. This comprehensive report offers a region-wide review of legal and policy frameworks affecting indigenous communities, drawing upon country-level data from Bangladesh, Cambodia, India, Indonesia, Lao PDR, Malaysia, Nepal, the Philippines, Thailand, and Viet Nam. In addition, secondary sources—including ILO conventions, UN declarations, national constitutions, development plans, and court decisions—are incorporated to trace the legal architectures of recognition and exclusion (Suwendra, 2018).

The research process involved a thematic content analysis, identifying recurring patterns and contradictions across four key domains: (1) legal definitions and criteria of indigeneity; (2) land and natural resource governance; (3) participatory and consultative mechanisms; and (4) alignment with international human rights norms such as ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). These thematic areas are selected based on their centrality to both the ILO report and broader academic debates on indigenous rights and development.

To account for cross-national variation, the study employs a comparative case study approach, focusing particularly on three illustrative cases: the Philippines, as a relatively progressive model with the Indigenous Peoples Rights Act (IPRA); Nepal, as the only Asian country to ratify ILO

Convention No. 169; and Indonesia, as a case of partial recognition with unresolved legislative efforts. These cases are not meant to be exhaustive but serve to highlight divergent state approaches and the contested meanings of recognition in development contexts.

While the study is grounded in textual and institutional analysis, it also draws on critical hermeneutics to interpret how indigenous peoples are framed—as legal subjects, development targets, or obstacles—within official discourses. It is attentive to the silences, contradictions, and symbolic gestures embedded in legal texts and policy documents, and how these shape material outcomes on the ground.

Given its regional scope and reliance on secondary sources, the study acknowledges certain limitations. It does not provide ethnographic or primary field data, and thus cannot capture the full diversity of indigenous experiences and resistance strategies. However, by critically engaging with official documents, international norms, and comparative policy frameworks, the study offers valuable insights into how recognition and exclusion operate in tandem within the development regimes of contemporary Asia.

FINDINGS AND DISCUSSION

The Politics of Legal Recognition: Between Inclusion and Ambiguity

Despite notable normative advances in several Asian countries, the legal recognition of indigenous peoples continues to constitute a highly contested and politically charged domain. Nowhere is this more evident than in the Philippines, where the passage of the *Indigenous Peoples Rights Act* (IPRA) in 1997 was internationally acclaimed as a model of progressive legal reform (Prill-Brett, 2007). The law affirms four key bundles of rights for indigenous cultural communities (ICCs)/indigenous peoples (IPs): rights to ancestral domains and lands, self-governance and empowerment, social justice and human rights, and cultural integrity. In particular, it mandates the recognition of ancestral domain titles (*Certificate of Ancestral Domain Title*, or CADT), the institutionalization of customary governance structures, and the requirement of Free, *Prior and Informed Consent* (FPIC) in all projects affecting indigenous territories (Tryggvadóttir & Dís Skaptadóttir, 2018).

However, more than two decades since its enactment, the gap between legal ideals and on-the-ground implementation remains vast and persistent. The *National Commission on Indigenous Peoples* (NCIP), established as the primary implementing body of IPRA, has been criticized for institutional weaknesses, lack of autonomy, and susceptibility to external political and corporate pressures. Several studies and civil society reports have documented how FPIC processes are often undermined—either bypassed entirely, manipulated through the selection of compliant community leaders, or implemented as formalities after project decisions have been made. Rather than serving as a safeguard, FPIC has in some cases become a tool of legitimization for extractive industries operating in indigenous territories (Robinson et al., 2004).

Moreover, the issuance of CADTs has proceeded at a slow and uneven pace, hindered by bureaucratic red tape, underfunding, and overlapping claims with state-recognized protected areas, mining concessions, or agribusiness projects. As of 2023, only around 260 CADTs have been formally issued, covering a fraction of the total indigenous land claims in the archipelago. At the same time, large-scale infrastructure initiatives under the "Build, Build, Build" development agenda, as well as foreign-funded energy and mining projects, continue to encroach upon ancestral domains—often without meaningful consultation or redress (Hoff & Walsh, 2018).

The fragmented implementation of IPRA reveals the broader structural tension between indigenous rights and a development model predicated on territorial appropriation and natural resource extraction. It demonstrates that legal recognition alone, without political will, institutional

integrity, and accountability mechanisms, is insufficient to protect indigenous communities from dispossession and marginalization. In effect, IPRA represents both a powerful legal tool and a cautionary example of how recognition can be hollowed out through institutional inertia and the persistent dominance of state-corporate interests (Doyle, 2020).

Nepal is frequently cited as a normative vanguard in Asia due to its ratification of the ILO Convention No. 169 in 2007—the only country in the region to have done so. This commitment signaled a formal state recognition of indigenous peoples' rights to cultural identity, self-determination, land, and natural resources, as articulated in international human rights frameworks. Furthermore, the 2015 Constitution of Nepal embeds commitments to multiculturalism and social justice, mandating affirmative action measures for historically marginalized groups—including *Adivasi-Janajati* communities—through reserved political representation, proportional inclusion in public service, and the establishment of dedicated constitutional bodies such as the *Adivasi-Janajati Commission* (Kniffin & Patterson, 2019).

Yet, despite these progressive legal provisions, a critical gap persists between symbolic acknowledgment and substantive structural transformation. The *Adivasi-Janajati Commission*, while institutionally significant, remains politically peripheral—lacking both enforcement power and fiscal autonomy. Its advisory status has limited its ability to influence major state decisions, particularly in relation to land restitution, natural resource management, and the protection of customary governance systems. More broadly, mechanisms for indigenous participation in policy-making remain consultative rather than deliberative, thereby failing to redistribute decision-making authority in ways that reflect genuine self-determination.

Compounding this institutional marginality is the contentious and politically fraught issue of defining indigeneity. The official recognition of 59 *indigenous nationalities*—as codified by the *National Foundation for the Development of Indigenous Nationalities Act* (Escobar, 2011a)—has been challenged by communities left off the list, sparking debates over authenticity, cultural continuity, and state-driven classification. The absence of transparent, participatory criteria for such recognition has fueled accusations of elite capture, instrumentalization, and bureaucratic gatekeeping. Consequently, the process of determining who qualifies as *Adivasi-Janajati* has itself become a site of contestation, with material implications for access to rights, resources, and political representation.

This contested politics of recognition illustrates how indigeneity, rather than being merely descriptive, is actively constructed, regulated, and politicized by the state. As scholars of critical indigeneity have argued, legal recognition can function as both a protective mechanism and a disciplinary apparatus—legitimizing certain identities while excluding others from the benefits of inclusion. In Nepal, the tension between multicultural constitutionalism and majoritarian statecraft is evident in the slow pace of land reform, the persistence of discriminatory attitudes, and the lack of effective legal remedies for indigenous rights violations (Murray Li, 2010).

Ultimately, Nepal's experience reveals that ratifying international instruments and enshrining indigenous rights in the constitution are necessary but insufficient steps. Without robust implementation mechanisms, transformative redistribution of power, and recognition of indigenous legal pluralism, formal commitments risk becoming performative gestures within a broader regime of development-driven assimilation.

In contrast to the more overt legal commitments of countries like the Philippines and Nepal, Indonesia presents a case of deeply ambivalent and selective recognition of indigenous peoples. The landmark Constitutional Court ruling in 2012 (Putusan MK No. 35/PUU-X/2012) marked a pivotal moment by affirming that *hutan adat* (customary forests) are no longer part of state forest lands (*kawasan hutan negara*), but belong to *masyarakat hukum adat* (HB & Hanifah, 2018). This decision was widely celebrated by indigenous rights activists as a constitutional breakthrough. However, in the absence of a comprehensive Indigenous Peoples Law—commonly referred to as the

RUU Masyarakat Adat—the practical implementation of this recognition has remained fragmented, inconsistent, and vulnerable to political interference (Tobroni, 2016).

One of the key impediments lies in Indonesia's bureaucratic and conditional recognition framework, which requires indigenous communities to undergo a multi-tiered validation process to prove their legal existence. This includes demonstrating a distinct cultural identity, traditional institutions, genealogical continuity, a written or mapped territorial boundary, and endorsement by regional governments. Many of these requirements are difficult to fulfill for communities whose histories are transmitted orally, whose territories have been encroached upon or unrecognized in formal cartographic systems, and whose institutions have been weakened by decades of state assimilation policies.

Moreover, the process of recognition is decentralized and subject to the discretion of local governments, many of which are closely aligned with business interests. This opens the door to clientelism, delay, or outright rejection of indigenous claims, especially when they conflict with concession areas for palm oil plantations, mining operations, or infrastructure megaprojects such as the food estate program or the trans-Papua highway (Schoneveld et al., 2010). The *Ministry of Environment and Forestry* (KLHK) has been criticized for its inconsistent application of the Constitutional Court decision, as it retains significant discretionary authority over forest classification and permits (Metherall et al., 2022).

To date, while some communities have succeeded in securing recognition of their *hutan adat*—often with the support of civil society organizations and sympathetic local leaders—the overall scope remains marginal. As of early 2023, less than 2% of Indonesia's estimated 40 million hectares of indigenous territories have been formally recognized by the state, leaving the vast majority of indigenous communities vulnerable to land dispossession, criminalization, and ecological degradation.

This selective and conditional recognition model reflects what some scholars term "governed indigeneity"—a system in which legal acknowledgement is granted not as an inherent right, but as a privilege contingent upon compliance with state-defined norms of modernity, legality, and development rationality. It reinforces a vision of national development that tolerates indigeneity only insofar as it does not challenge extractivist agendas or centralized territorial control (Calavita, 2007).

In this light, Indonesia's case reveals that the absence of an overarching legal framework is not merely an administrative gap, but a symptom of deeper structural reluctance to embrace indigenous sovereignty. Without dismantling the extractive political economy and reconfiguring the legal architecture to support collective land rights and customary governance, recognition remains precarious—granted in pieces, revoked at will, and perpetually vulnerable to being overridden by the imperatives of economic growth (Escobar, 1992).

This politics of recognition reveals how legal inclusion can be strategically framed to manage, delimit, and even depoliticize indigenous claims—ensuring symbolic legitimacy while avoiding redistribution or deeper structural reform.

Development Without Consent: The Structural Marginalization of Indigenous Territories

Across Asia, dominant development paradigms are deeply rooted in a model of economic growth that privileges infrastructure expansion, natural resource extraction, and integration into global markets. This model, while often framed through the language of "national progress," "poverty alleviation," or "green growth," has historically treated indigenous territories as empty frontiers for exploitation—thereby reproducing patterns of internal colonialism and territorial dispossession. Far from being passive victims, indigenous communities are at the frontline of resistance, yet their rights are systematically sidelined or overridden by the machinery of state-

capitalist development.

In India, the case is particularly revealing. The *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act*, or Forest Rights Act (FRA) of 2006, was enacted to redress historical injustices by recognizing the customary land rights of tribal communities, including rights to inhabit, manage, and protect forest territories. In theory, this law represents a transformative departure from colonial-era forest governance under the Indian Forest Act of 1927. However, in practice, the implementation of FRA has been fraught with institutional resistance, bureaucratic hurdles, and competing legal regimes (Escobar, 2011b).

One of the most persistent challenges has been the tension between conservation frameworks and tribal rights. Protected area regimes—such as wildlife sanctuaries and tiger reserves—continue to operate under exclusionary models that deny tribal occupancy, despite FRA's explicit provision for co-existence. Thousands of Adivasi families have been evicted or face threat of eviction under the pretext of "encroachment," even in areas where their land claims are under review or pending approval. Notably, the Ministry of Environment, Forest and Climate Change has often prioritized conservation targets over community rights, revealing a bureaucratic bias that undermines the law's intent (Engle Merry, 2012a).

Similarly, the expansion of mining, hydroelectric, and industrial corridors—especially under policies like the "Make in India" initiative—has led to large-scale land acquisitions in Scheduled Areas, frequently without meaningful consultation or adherence to the principle of Free, Prior and Informed Consent (FPIC). Environmental clearance processes, which should legally require public hearings and social impact assessments, are routinely bypassed or manipulated. In some cases, Gram Sabha (village council) consents are fabricated or secured through coercion, violating both constitutional protections under the Fifth Schedule and the procedural safeguards embedded in the FRA (Bunzl, 1996).

At a deeper level, the state's dual role as both regulator and beneficiary of extractive development projects creates a structural conflict of interest that renders indigenous protections subordinate to economic priorities. Judicial interventions have offered mixed outcomes: while some courts have upheld community rights, others have deferred to "national interest" narratives, reinforcing the expendability of indigenous territories in the name of development (Tamburro & Tamburro, 2023).

India's case thus illustrates that recognition of land rights is not a sufficient guarantee of justice unless it is accompanied by institutional reform, legal harmonization, and political accountability. Without dismantling the structural logic that treats indigenous spaces as sacrifice zones for capital accumulation, legal protections risk being reduced to symbolic gestures—incapable of confronting the material realities of displacement, dispossession, and cultural erosion (Jenkins, 2013).

In Cambodia, the enactment of the 2001 Land Law and subsequent regulations—including the 2009 *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*—theoretically established a legal pathway for the recognition of indigenous communal land rights (Khoday & Natarajan, 2012). These provisions were, on paper, aligned with international human rights norms and widely praised as a progressive step toward acknowledging the collective identity and territorial claims of indigenous peoples, particularly in the northeastern provinces.

However, in practice, the process of communal land registration has been riddled with bureaucratic complexity, underfunding, and political obstruction (Magina et al., 2020). The titling procedure is multi-staged, involving registration as a legal entity, mapping of land, and final approval by multiple government agencies, each with their own discretionary authority. As of 2023, only around 30 indigenous communities have successfully completed the process, out of an estimated 400 to 500 eligible groups—a dismal figure that exposes the severe limitations of procedural recognition.

At the same time, Economic Land Concessions (ELCs) granted to agribusiness, logging, and mining companies have accelerated dramatically, often overlapping with indigenous territories. These concessions—frequently issued without the knowledge or consent of local communities—have led to widespread land grabbing, forced evictions, and environmental degradation. In many cases, indigenous villagers have found themselves criminalized for defending ancestral lands that the state simultaneously claims to protect. Thus, legal recognition in Cambodia operates less as a tool of empowerment than as a procedural ideal—available in theory, but elusive in practice (McCarthy et al., 2012).

A parallel dynamic can be observed in Indonesia, where flagship infrastructure and agribusiness initiatives—such as palm oil expansion, transmigration schemes, and more recently the "food estate" megaproject—continue to displace indigenous populations despite official commitments to inclusivity. These projects, launched under the banner of "national development" and "food security," frequently encroach upon *tanah adat* (customary lands), often justified through top-down declarations of "idle land" or "underutilized territory" (Ginting & Espinosa, 2016).

While Indonesian law and policy frameworks increasingly reference Free, Prior and Informed Consent (FPIC)—particularly in relation to forestry and spatial planning—its implementation remains superficial and extractive. Consultations are often reduced to procedural formalities, conducted *post hoc* rather than before project approval, and involve actors with limited legitimacy within indigenous communities. In some instances, *adat* leaders are pressured or co-opted to endorse projects without collective deliberation. Moreover, asymmetries of information, power, and language further compromise the possibility of meaningful participation (Ginting & Espinosa, 2016).

In both Cambodia and Indonesia, the core issue is not the absence of legal mechanisms per se, but their instrumentalization within a development regime that prioritizes investment over indigenous rights. Recognition becomes performative—a checkbox in project assessments or donor reports—rather than a structural guarantee of protection, agency, and territorial sovereignty. As such, these cases exemplify a broader regional pattern in which legal recognition functions less as a transformative right and more as a mechanism of managed inclusion, calibrated to serve state and corporate interests while neutralizing indigenous resistance.

These cases suggest that recognition without enforceable land security mechanisms merely institutionalizes vulnerability. Development interventions are not neutral; they are shaped by political economies that privilege corporate and state interests, reproducing colonial patterns of resource extraction under neoliberal governance.

Participation or Performance? Rethinking Indigenous Inclusion in Policy-Making

The principle of Free, Prior and Informed Consent (FPIC), as enshrined in both the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* and *ILO Convention No. 169*, is premised on the assumption that indigenous communities have the right to determine the course of development that affects their lives, lands, and cultures. It mandates that states must obtain the consent of indigenous peoples before initiating projects or policies that impact them—particularly in relation to land, natural resources, and cultural survival. This principle is not merely procedural; it is a manifestation of the right to self-determination.

Yet, in practice across much of Asia, indigenous participation has been reduced to a symbolic and performative exercise, often carefully choreographed by state institutions to maintain the appearance of inclusivity while preserving centralized decision-making authority. Consultation frameworks are typically designed and controlled by government agencies, implemented with minimal transparency, limited timelines, inaccessible language, and in many cases, without mechanisms for accountability or veto power. The result is a hollow process in which participation functions not to empower, but to legitimize preordained outcomes.

In Thailand, this dynamic is particularly pronounced. Although the 2016 Constitution contains language acknowledging "the Thai people of diverse ethnic groups," the state continues to refer to indigenous communities as "chao khao" (hill tribes)—a term laden with developmentalist and assimilationist undertones. These communities, including the Karen, Hmong, Lahu, and Akha, are often viewed through a securitized and ecological lens—as potential threats to national forests or border integrity. Policies such as the *Forest Master Plan* and *Community Forest Act* routinely exclude indigenous perspectives, despite directly impacting their access to ancestral lands.

Consultation in such contexts rarely entails genuine dialogue or shared decision-making. Instead, it operates within the parameters of technocratic environmental governance, where state-defined expertise displaces indigenous knowledge systems and territorial worldviews. Indigenous claims are translated into bureaucratic terms—land use, productivity, ecological impact—stripped of their spiritual, historical, and ontological meanings. Participation becomes a matter of checking boxes, not honoring consent .

This performativity is mirrored in other national contexts. In Bangladesh, the implementation of the 1997 *cPeace Accord*—which promised autonomy, demilitarization, and land dispute resolution—has stalled for over two decades. Indigenous peoples in the CHT, such as the Chakma, Marma, and Tripura, are rarely consulted in development planning, and when they are, their participation is mediated through elite intermediaries or dominated by military oversight. The state's failure to institutionalize participatory governance in the CHT underscores the fragility of formal peace when political inclusion is not substantively realized.

Even in more normatively advanced contexts, such as the Philippines, institutionalized mechanisms like the National Commission on Indigenous Peoples (NCIP) have been criticized for becoming gatekeepers rather than guarantors of indigenous participation. FPIC procedures are frequently manipulated to manufacture consent, with insufficient oversight and conflicts of interest between government regulators and corporate stakeholders. Participation thus becomes a tool of governance rather than a right of resistance—a means of absorbing indigenous dissent into procedural rituals that obscure rather than challenge structural inequalities.

This regional pattern suggests a deeper epistemological and political problem: whose knowledge counts, and who decides? Without reconfiguring participation from token inclusion toward co-governance, current frameworks risk reproducing the very power imbalances they claim to correct. Genuine participation must go beyond consultation to include recognition of indigenous legal systems, knowledge ecologies, and territorial governance—anchored in trust, long-term dialogue, and institutional redistribution of authority..

CONCLUTION

This study has examined the complex dynamics of legal recognition and structural exclusion of indigenous peoples in Asia through a critical analysis of development policies and governance practices in selected countries. Despite the adoption of progressive legal frameworks in the Philippines, Nepal, and Indonesia, as well as nominal commitments to human rights principles such as Free, Prior and Informed Consent (FPIC), the empirical realities across the region demonstrate a persistent and systemic marginalization of indigenous communities.

Legal recognition, when not coupled with institutional accountability, political will, and structural reform, often becomes symbolic or conditional—granting visibility without power, and inclusion without transformation. Development paradigms rooted in extractive economics, territorial consolidation, and technocratic governance continue to displace indigenous worldviews, erase customary land systems, and marginalize indigenous participation to performative rituals. Even well-intentioned legal instruments can be instrumentalized to depoliticize indigenous claims, co-opt

resistance, and legitimize dispossession.

This article argues that recognition must be reimagined—not as a bureaucratic concession, but as a framework for decolonial justice and territorial sovereignty. Genuine indigenous inclusion requires the dismantling of hierarchical governance structures, the validation of plural legal systems, and the centering of indigenous epistemologies in the making of policy and development agendas. Without these transformations, development will continue to reproduce the very exclusions it purports to redress.

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